

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-7445

In The
United States Court of Appeals
For The Second Circuit

FRAMEN STEEL SUPPLY COMPANY, INC.,

Plaintiff-Appellant.

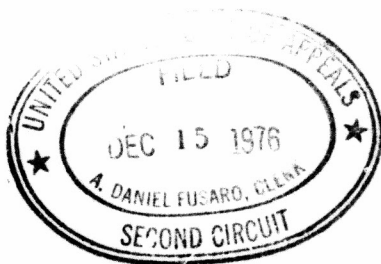
vs.

PHILIPS INDUSTRIES, INC.,

Defendant-Appellee.

*On Appeal from the United States District Court of the
Southern District of New York.*

JOINT APPENDIX



BASS, ULLMAN & LUSTIGMAN

Attorneys for Plaintiff-Appellant

747 Third Avenue

New York, New York 10017

(212) 751-9494

SULLIVAN & CROMWELL

Attorneys for Defendant-Appellee

48 Wall Street

New York, New York 10005

(212) 952-8100

(10239)

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1a

DOCKET ENTRIES

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO DAY YEAR	J	N/S	O	R	R	DEMAND THIR	JUDGE NUMBER	JURY DEM	DOCKET
208-1	75 1643	4 4 75	4	190	1	12		1023.	0855	P	75 1643

PLAINTIFFS
FRANK STEEL SUPPLY COMPANY, INC.

DEFENDANTS
KNAPP, J.
PHILIPS INDUSTRIES, INC.

8/24

CAUSE

Breach of contract - for monies due.

rg

ATTORNEYS

BASS & ULLMAN
747 Third Avenue
New York, N. Y. 10017
PL 1-9494

Sullivan & Cromwell
48 Wall St. NY 10005 952-8100

<input type="checkbox"/> FILED <input type="checkbox"/> INDEXED <input type="checkbox"/> SERIALIZED <input type="checkbox"/> FILED	APR 4 1975	FILED	FILED
	8/2/76 74745-1407	FILED	FILED
UNITED STATES DISTRICT COURT DOCKET		77-30-76	

A

NR	PROCEEDINGS
4-75	(1) Filed complaint; and issued summons.
2-22-75	(2) Filed Summons with Marshal's Return. Served Philips Industries, Inc. by L.L. Ryan, Jr. 4/10/75
3-01-75	(3) Filed stip & order that time which deft's may answer complaint is ext. from 5-10-75 to 5-24-75. Knapp, J.
3-23-75	(4) Filed deft's affidavit & notice of motion re: dismissing action for lack of personal jurisdiction ret. 6/6/75, 2:00 p.m. room 10.
3-23-75	(5) Filed Memorandum of Deft in support of motion to dismiss for lack of personal jurisdiction.
6-06-75	(6) Filed stip & order that return date for deft's motion to dismiss the complaint is adj. to 6-27-75. Knapp, J.
6-20-75	(7) Filed pltf's memorandum of law in support of motion to stay deft's motion.
6-20-75	(8) Filed pltf's affidavit & notice of motion for an order staying deft's motion to dismiss ret. 6-27-75.
6-25-75	(9) Filed Memorandum of Francis Steel Supply Co. in opposition to motion to dismiss.
6-25-75	(10) Filed affidavit of R. Poline in opposition to motion to dismiss.
6-16-75	(11) Filed stip & order that time of deft. to file answering & reply affidavits to the pending motion to dismiss is ext. to 7-25-75. etc. Knapp, J.
6-31-75	--- Filed Memo End. on motion of 5/23/75 of Document #4. With Consent of both parties, motion adjourned sine die. Parties have agreed to engage in discovery of one another limited to jurisdictional issues. Such discovery is to be completed within 90 days of signing of endorsement. So Ordered. Knapp, J.(mp)
12-76	(12) Filed request for documents under Rule 34 by deft. Philips Industries, Inc. to pltf.
12-76	(13) Filed deft.'s notice of deposition of pltf on 2-17-76.
09-76	(14) Filed affidavit of H.H. Croghan (supplemental) Re: statement of 5-15-75.
09-76	(15) Filed affidavit of Paul Cline, director of Philips Industries.
01-76	(16) Filed deft's affidavit & notice of motion Re: discovery ret. 3-5-76.
01-76	(17) Filed deft's memorandum in support of motion ret. 3-5-76.
03-76	--- Filed Memo-endorsed on deft's motion filed 3-1-76 #16: Motion referred to Magistrate Bernikow to hear & report. The Magistrate is also requested to supervise preparation of a pre trial order. Knapp, J.
08-76	(18) Filed stip & order that deft's motion to compel discovery ret. 3-5-76 is adj. to 3-12-76. Knapp, J.
12-76	--- Before Knapp, J. PRE-TRIAL CONFERENCE HELD.
12-76	(19) Filed Order that deft's motion to compel discovery is granted as indicated. Deft's motion for attys fees & costs is denied. Magistrate Bernikow.
10-76	(20) Filed stip & order that deft's motion to dismiss ret. 7-14-76, deft's supplemental memorandum shall be submitted before 7-2-76. Knapp, J.
11-76	(21) Filed deft's supplemental memorandum in support of its motion to dismiss.
0-76	(22) Filed pltf's supplemental memorandum in opposition to deft's motion
12-76	(23) Filed deft's supplemental reply memorandum in support of its motion to dismiss
12-76	(24) Filed deft's supplemental reply memorandum in support of its motion to dismiss
12-76	(25) Filed Memorandum & order. Accordingly, we find that the complaint must be dismissed for lack of personal jurisdiction over the deft. Settle order. Knapp, J. m/n
12-76	(26) Filed deposition of Ruben Poline taken on 4-29-76. m/n
07-30-76	(27) Filed Order and Judgment. Deft's motion to dismiss complaint is granted. Complaint Dismissed. Knapp, J. Judgment entered 07-30-76 Clerk. m/n

continued on page #2

BEST COPY AVAILABLE

vs. Philips Industries, Inc. 75 C.1643

Page #2

[illegible]

COMPLAINT (Filed April 4, 1975)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4a

-----x
FRAMEN STEEL SUPPLY COMPANY, INC., :
Plaintiff, : Civil Action No.
vs. :
PHILIPS INDUSTRIES, INC., : COMPLAINT
Defendant. :
-----x

Plaintiff, by its attorneys, Bass & Ullman, as and
for its complaint alleges:

1. Plaintiff is a corporation, duly organized and
existing under the laws of the State of New York with its
principal place of business in the County of New York.

2. Upon information and belief, defendant is a
corporation duly organized and existing under the laws of the
State of Ohio with its principal place of business in Dayton,
Ohio.

3. The jurisdiction of this Court rests upon the
ground that this is a civil action between citizens of different
states wherein the amount in controversy exceeds the sum or
value of \$10,000. exclusive of interest and costs, 28 U.S.C.
§1332. Venue is based on the provisions of 28 U.S.C. §1391.

FIRST CAUSE OF ACTION

4. On or about August 9, 1974, as evidenced by a

confirmation of purchase order No. 12-46509, a copy of which is annexed hereto as Exhibit 1, defendant agreed to purchase and plaintiff agreed to have manufactured for defendant at its special instance and request, 12 separate items consisting of various quantities of Prime Hot Rolled Steel Coils specially manufactured for defendant to its detailed specifications and requirements, at an agreed price as is more fully set forth in Exhibit 1.

5. On or about October 15, 1974, defendant notified plaintiff that it was cancelling items 10, 11 and 12 of the aforesaid purchase order set forth in paragraph 4 hereof.

6. Plaintiff fully complied with all terms of its agreement, as aforesaid, and duly completed the manufacture of items 1 through 9 on the purchase order set forth in paragraph 4 hereof, and tendered delivery of same to defendant.

7. Thereafter, and on or about December 6, 1974, defendant, without cause or justification, and in breach of its agreement, as aforesaid, notified plaintiff that it was cancelling the entire order and that it refused to accept delivery of all or any part of same.

8. Thereafter, and in further breach of its agreement as aforesaid, defendant refused to pay for the loss and damage sustained by plaintiff as a result of defendant's cancellation.

9. The items referred to had already been specially manufactured for the defendant and are unsuitable for sale to others in the ordinary course of the plaintiff's business.

10. As a result of defendant's wrongful and unlawful breach of its agreement, plaintiff has been damaged as follows:

(a) In the sum of \$354,060. representing the agreed upon price of items 1 through 9 which were specially manufactured for defendant.

(b) In the sum of \$13,750. representing plaintiff's loss of profit on items 10 through 12 which were cancelled by defendant as set forth in paragraph 5 hereof.

(c) In the sum of \$150,000. representing damages for loss of good will and reputation which plaintiff sustained as a result of defendant's cancellation of items 10 through 12, as aforesaid.

(d) In the sum of \$13,875. representing the approximate storage charges which plaintiff has incurred in warehousing and storing the manufactured items which defendant has refused to accept.

SECOND CAUSE OF ACTION

11. On or about August 20, 1974, as evidenced by a confirmation of purchase order No. 12-46566, a copy of which is annexed hereto as Exhibit 2, defendant agreed to purchase, and plaintiff agreed to have manufactured for defendant at its special instance and request, 100 tons of certain specified items of Prime Hot Rolled Steel Coils specially manufactured for defendant to its detailed specifications and requirements at an

agreed price, as is more fully set forth in Exhibit 2.

12. On or about October 15, 1974, defendant notified plaintiff that it was cancelling half of the order, as set forth in paragraph 11 hereof.

13. Plaintiff fully complied with all terms of its agreement, as aforesaid, and duly completed the manufacture of the 50 tons of the items set forth in paragraph 11 hereof, and tendered delivery of same to defendant.

14. Thereafter, and on or about December 6, 1974, defendant, without cause or justification, and in breach of its agreement, as aforesaid, notified plaintiff that it was cancelling the entire order and that it refused to accept delivery of all or any part of same.

15. Thereafter, in further breach of its agreement as aforesaid, Defendant refused to pay for the loss and damage sustained by plaintiff as a result of defendant's cancellation.

16. The items referred to had already been specially manufactured for the defendant and are unsuitable for sale to others in the ordinary course of the plaintiff's business.

17. As a result of defendant's wrongful and unlawful breach of its agreement, plaintiff has been damaged as follows:

(a) In the sum of \$19,450. representing the agreed upon price of the 50 tons of the items which were specially manufactured for defendant.

(b) In the sum of \$2,500. representing plaintiff's loss of profit on the 50 tons which were cancelled by

defendant, as set forth in paragraph 11 hereof.

(c) In the sum of \$150,000. representing damages for loss of good will and reputation which plaintiff sustained as a result of defendant's cancellation on October 15, 1974.

(d) In the sum of \$750. representing the approximate storage charges which plaintiff has incurred in warehousing and storing the manufactured items which defendant has refused to accept.

+

THIRD CAUSE OF ACTION

18. On or about September 3, 1974, as evidenced by a confirmation of purchase order No. 12-46775, a copy of which is annexed hereto as Exhibit 3, defendant agreed to purchase, and plaintiff agreed to have manufactured for defendant at its special instance and request, 4 separate items consisting of various quantities of Prime Hot Rolled Steel Coils specially manufactured for defendant to its detailed specifications and requirements, at an agreed price, as is more fully set forth in Exhibit 3.

19. On or about October 15, 1974, defendant notified plaintiff that it was cancelling items 3 and 4 of the aforesaid purchase order set forth in paragraph 18 hereof.

20. Thereafter, and on or about December 6, 1974, defendant, without cause or justification, and in breach of its agreement, as aforesaid, notified plaintiff that it was cancelling the entire order and that it refused to accept delivery of

all or any part of same.

21. Thereafter, and in further breach of its agreement as aforesaid, defendant refused to pay for the loss and damage sustained by plaintiff as a result of defendant's cancellation.

22. The items referred to had already been specially manufactured for the defendant and are unsuitable for sale to others in the ordinary course of the plaintiff's business.

23. As a result of defendant's wrongful and unlawful breach of its agreement, plaintiff has been damaged as follows:

(a) In the sum of \$153,600. representing the agreed upon price of items 1 and 2 which were specially manufactured for defendant.

(b) In the sum of \$10,000. representing plaintiff's loss of profit on items 3 and 4 which were cancelled by defendant as set forth in paragraph 19 hereof.

(c) In the sum of \$150,000. representing damages for loss of good will and reputation which plaintiff sustained as a result of defendant's cancellation of items 3 and 4, as aforesaid.

(d) In the sum of \$6,000. representing the approximate storage charges which plaintiff has incurred in warehousing and storing the manufactured items which defendant has refused to accept.

WHEREFORE, Plaintiff demands judgment against

defendant as follows:

(a) On its first cause of action in the amount of \$531,685;

(b) On its second cause of action in the amount of \$172,700; and

(c) On its third cause of action in the amount of \$319,600,

together with interest and the costs of this suit, and for such other and further relief as may be just and proper.

Dated: New York, New York
April 3, 1975

BASS & ULLMAN
Attorneys for Plaintiff

By: *Shepherd L. Lipton*
(A Member of the Firm)

Office & P.O. Address
747 Third Avenue
New York, New York 10017
(212) 751-9494

EXHIBITS ANNEXED TO FOREGOING COMPLAINT

VENDOR

PHILIPS INDUSTRIES INC. 12a

PHILIPS INDUSTRIES INC.

Page 1 of 2

TO **Framen Steel**

SHIP TO **Appliance Group**

1 World Trade Center

200 Etter Drive

Suite 4667

New York, New York 10048

Nicholasville, Kentucky 40356

Attention: Rubin Polne

Attention: Dan Williams - PC

VENDOR NO.	DATE ORDERED 8/9/74	SHIP VIA best way
DATE REQUIRED	TERMS N/30	F.O.B.
ALL-SEE BELOW		

THIS ORDER IS:	STATE SALES TAX
<input checked="" type="checkbox"/> CONFIRMING (DO NOT DUPLICATE)	<input type="checkbox"/> TAXABLE
<input type="checkbox"/> NON-CONFIRMING	<input checked="" type="checkbox"/> NON-TAXABLE

QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
160	Tons		.075 Min. 44.82" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$19.10/cwt	
80	Tons		.084 Min. 45.62" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$18.95/cwt	
80	Tons		.084 Min. 36.50" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$18.95/cwt	
80	Tons		.081 Min. 55.06" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$19.45/cwt	
All the above material will ship in September and arrive in October					
160	Tons		.075 Min. 44.82" x Coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$19.10/cwt	
40	Tons		.084 Min. 57.50" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$19.45/cwt	
All of above material will ship October and arrive November					
175	Tons		.075 M 44.82" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$19.10/cwt	
80	Tons		.081 M 55.06" x coil HRCQ 10 T Max. Coils 20"-24" ID	\$19.45/cwt	

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.

AX EXEMPT NUMBER

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:

BY *George Allen*
PURCHASING AGENT
VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171

MAIL INVOICE IN
DUPLICATE TO:

PHILIPS INDUSTRIES
INC. DAYTON, OHIO 45424

**PHILIPS
INDUSTRIES
INC.**

Page 2 of 2

PURCHASE ORDER 8a.

NO. 14a

PO #12-46509 Page 2 of 2

P.O. NO. MUST APPEAR ON ALL CUST.
PARTS & CORRESPONDENCE
PART NO. MUST APPEAR ON ALL
PKGS. INVOICES & CORRESPONDENCE
ACKNOWLEDGE IF UNABLE TO
DELIVER BY DAY REQUIRED.

TO **Framen Steel**
1 WorldTrade Center
Suite 4667
New York, New York 10048
Attention: Rubin Polne

SHIP TO Appliance Group
200 Etter Drive
Nicholasville, Kentucky 40356
Attention: Dan Williams - PC

ENDOR NO.	DATE ORDERED 8/9/74	SHIP VIA best way	THIS ORDER IS: <input checked="" type="checkbox"/> CONFIRMING (DO NOT DUPLICATE) <input type="checkbox"/> NON-CONFIRMING	STATE SALES TAX <input type="checkbox"/> TAXABLE <input checked="" type="checkbox"/> NON-TAXABLE
DATE REQUIRED see below	TERMS n/30	F.O.B. SP		

QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
70	Tons		.084 M 36.50" x coil HRCQ	\$18.95/cwt	
			10 T Max. Coils		
			20"-24" ID		
			in November		
			***All of above material will ship/and arrive		
			in December, '74.		
175	Tons	CANC	.075 Min. 44.82" x Coil HRCQ	19.10/cwt	
			10T Max. Coil		
			20"-24" I.D.		
80	Tons	CANC	.081 Min. 55.06" x coil HRCQ	19.45/cwt	
			10 T Max. Coils		
20	Tons	CANC	20"-24" I.D. .066 Min. 55.31" x Coil HRCQ	19.45/cwt	
			10T Max. Coils		
			20"-24" ID		
			**All material will ship December '74 and arrive		
			January '75		
			VJ		

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.

TAX EXEMPT NUMBER
126645

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:

Dan Williams and John Morgan

BY **PURCHASING AGENT**

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-2171

15a

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3578-12

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PHILIPS INDUSTRIES 16a

P.O. NO. MUST APPEAR ON ALL CUST.
 INVOICES & CORRESPONDENCE
 PART NO. MUST APPEAR ON ALL
 PKGS. INVOICES & CORRESPONDENCE
 ACKNOWLEDGE IF UNABLE TO
 DELIVER BY DAY REQUIRED.

TO Framen Steel
1 World Trade Center
Suite 4667
New York, New York 10048
Attn: Rubin Polne

SHIP TO Appliance Group
200 Etter Drive
Nicholasville, Kentucky 40356
Attention: Dan Williams - PC

ENDOR NO.	DATE ORDERED	SHIP VIA
	originally--8/9/74 today--10/15/74	BEST WAY
DATE REQUIRED	TERMS	F.O.B.
SEE BELOW	N/30	SP

THIS ORDER IS:

☒ **CONFIRMING**
(DO NOT DUPLICATE)

☐ **NON-CONFIRMING**

STATE SALES TAX

☐ **TAXABLE**

☒ **NON-TAXABLE**

[illegible]

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.

TAX EXEMPT NUMBER

126645

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:

G. Allman

BY

PURCHASING AGENT

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171

DUPLICATE TO:

EXHIBIT 2 - CONFIRMATION OF PURCHASE ORDER

NO. 12-46566 17a

 XXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXX

**PHILIPS
INDUSTRIES
INC.**

NO. 12-46566

 P.O. NO. MUST APPEAR ON ALL CUST.
 INVOICES & CORRESPONDENCE
 PART NO. MUST APPEAR ON ALL
 PKGS. INVOICES & CORRESPONDENCE
 ACKNOWLEDGE IF UNABLE TO
 DELIVER BY DAY REQUIRED.

TO Framen Steel

1 World Trade Center

Suite #4667

New York,

New York 10048

SHIP TO Appliance

200 Etter Drive

Nicholasville, Kentucky 40356

Attn: Smith/Allman/Johnson

ORDER NO.	DATE ORDERED	SHIP VIA	THIS ORDER IS:	STATE SALES TAX
originally--8/20/74	today--12/6/74	BEST WAY	<input checked="" type="checkbox"/> CONFIRMING (DO NOT DUPLICATE)	<input type="checkbox"/> TAXABLE
TE REQUIRED	TERMS	F.O.B.	<input type="checkbox"/> NON-CONFIRMING	<input checked="" type="checkbox"/> NON-TAXABLE
See Below	N/30	Philadelphia, Pennsylvania (Port of Entry)		

QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
THIS ORDER NOW READS IN PART:					
150	Tons		.066 44.38" x Coil HRCQ	\$19.45/CWT	
PLEASE CHANGE TO READ:					
CANCEL THIS ENTIRE ORDER IMMEDIATELY!					
CHANGE ORDER					

S PURCHASE ORDER SUBJ

ITEM(S)	ACCOUNT NO.
	12-(J)-1210

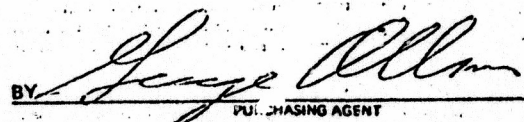
EXEMPT NUMBER
126645

NOTICE

ALL CARTONS, BUNDLES, CRATES, AND
 PALLETS MUST SHOW THE NICHOLAS-
 VILLE PART NUMBER AND PURCHASE
 ORDER NUMBER ON THE OUTSIDE OF
 EACH PACKAGE. EACH INVOICE AND
 PACKING SLIP MUST CARRY THE PROPER
 NICHOLASVILLE PART NUMBER AND
 PURCHASE ORDER NUMBER. FAILURE TO
 FOLLOW THESE DIRECTIONS WILL DELAY
 PAYMENT OF INVOICE.

ING ON THE FACE AND REVERSE SIDE HEREOF.

BY



PURCHASING AGENT

 VICE PRESIDENT MANUFACTURING SERVICES LOCATED
 DAYTON, OHIO PHONE (513) 253-7171

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:

G. Allman/P. Johnson/J. Smith

REV 12 69

VENDOR

• P.O. NO. MUST APPEAR ON ALL CUST.
INVOICES & CORRESPONDENCE
• PART NO. MUST APPEAR ON ALL
PKGS. INVOICES & CORRESPONDENCE
• ACKNOWLEDGE IF UNABLE TO
DELIVER BY DAY REQUIRED.

to Framen Steel
1 World Trade Center
Suite #4667
New York, New York 10048

SHIP TO Appliance Group

200 Etter Drive

~~Nicholasville, Kentucky 40356~~

Attn: J. Morgan & G. Allman

VENDOR NO.

DATE ORDERED

SHIP VIA

original--8/20/74 today--10/15/74 BEST WAY

DATE REQUIRED ☐

TERMS

F.O.B.

SEE BELOW

N/30

Philadelphia, Pennsylv

THIS ORDER IS:

STATE SALES TAX

☒ CONFIRMING
(DO NOT DUPLICATE)

☐ TAXABLE

NON-CONFIRMING

YY	NON TAXABLE
----	-------------

(Port of Entry)

QTY	QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
				<u>THIS ORDER NOW READS IN PART:</u>		
1	100	Tons		.066 44.38" X Coil HRCQ	\$19.45/cwt	
				50/Tons - Nov. Shipment - Arrive Dec. '74		
				50/Tons - Dec. Shipment - Arrive Jan. '75		
				10 Ton - Max. Coils		
				20" -24" I.D.		
				Temper Pass. Part Number NR-18-1413-00		
				<u>PLEASE CHANGE TO READ:</u>		
1	50	Tons		.066 44.38" x coil HRCQ	\$19.45/cwt	
				REQUIRED: 50/Tons - ^{Nov} Dec. Shipment - ^{Dec} Arrive Jan. '75		
				CANCEL 50/Tons due in December. All else remains the same.		
				VI		

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
	12-00-1210		

X EXEMPT NUMBER
 126645

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:
 G. Allman/J. Morgan

BY

PURCHASING AGENT

**VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171**

**PHILIPS
INDUSTRIES
INC.**

P.O. NO. MUST APPEAR ON ALL CUST.
 INVOICES & CORRESPONDENCE
 PART NO. MUST APPEAR ON ALL
 PKGS. INVOICES & CORRESPONDENCE
 ACKNOWLEDGE IF UNABLE TO
 DELIVER BY DAY REQUIRED.

SHIP TO Appliance Division
200 Etter Drive

Nicholasville, Kentucky 40356
Attn: P. Johnson/J. Smith/G. Allmar

THIS ORDER IS:

☒ CONFIRMING
(DO NOT DUPLICATE)

☐ NON-CONFIRMING

STATE SALES TAX

☐ TAXABLE

☒ NON-TAXABLE

[illegible]

ITEM(S)	ACCOUNT NO
	12-00-1210

126645

P. Johnson/G. Allman/J. Smith

NOTICE
ALL CARTONS, BUNDLES, CRATES, AND
PALLETES MUST SHOW THE NICHOLAS-
VILLE PART NUMBER AND PURCHASE
ORDER NUMBER ON THE OUTSIDE OF
EACH PACKAGE. EACH INVOICE AND
PACKING SLIP MUST CARRY THE PROPER
NICHOLASVILLE PART NUMBER AND
PURCHASE ORDER NUMBER. FAILURE TO
FOLLOW THESE DIRECTIONS WILL DELAY
PAYMENT OF INVOICE.

ING ON THE FACE AND REVERSE SIDE HEREOF.

BY

PURCHASING AGENT

**VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171**

NO.- 12-46775 21a

P.O. NO. MUST APPEAR ON ALL CUM
 INVOICES & CORRESPONDENCE
 PART NO. MUST APPEAR ON ALL
 INVOICES & CORRESPONDENCE
 ACKNOWLEDGE IF UNABLE TO
 DELIVER BY DAY REQUIRED.

to **Framen Steel**
1 World Trade Center
Suite #4667
New York, New York 10048
Attn: Rubin Polne

SHIP TO Appliance Group

200 Etter Drive

Nicholasville, Ky. 40356

Attn: D. Williams/ J. Morgan

VENDOR NO.	DATE ORDERED	SHIP VIA
	original--9/3/74 Today--10/15/74	BEST WAY
DATE REQUIRED	TERMS	F.O.B.
SEE BELOW	N/30	Philadelphia, Pennsylv-
		ania

THIS ORDER IS: ☒ CONFIRMING (DO NOT DUPLICATE) ☐ TAXABLE

☐ NON-CONFIRMING ☒ NON-TAXABLE

[illegible]

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
	12-00-1210		

AX EXEMPT NUMBER	
------------------	--

126645

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:

Williams - J. Morgan

BY

PURCHASING AGENT

**VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171**

VENDOR

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Tokyo
for m*

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not cut call

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND
ACCOMPANYING AFFIDAVIT OF HAROLD CROGHAM (Filed May 23, 1975)

UNITED STATES DISTRICT COURT

24a

SOUTHERN DISTRICT OF NEW YORK

- - - - - x

FRAMEN STEEL SUPPLY COMPANY, INC., :

Plaintiff, : 75 Civ. 1643 (W.K.)

-against- : NOTICE OF MOTION

PHILIPS INDUSTRIES, INC., :

Defendant. :

- - - - - x

S I R S :

PLEASE TAKE NOTICE that, upon the complaint and the affidavit of Harold Croghan, sworn to May 15, 1975, defendant Philips Industries, Inc. will move this Court at the United States Courthouse, courtroom 10, Foley Square, New York, New York on June 6, 1975 at 2:00 in the afternoon, or as soon thereafter as counsel may be heard, for an order pursuant to Rules 4(e) and 41(b) dismissing this action for lack of personal jurisdiction and for such other and further relief as may be just and proper.

Dated: New York, New York
May 21, 1975

Yours,

SULLIVAN & CROMWELL

by WILLIAM E. WALLIS
(A Member of the Firm)
48 Wall Street
New York, N.Y. 10005
(212) 952-8100
Attorneys for Philips
Industries, Inc.

TO: BASS & ULLMAN
747 Third Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

FRAMEN STEEL SUPPLY COMPANY, INC., :

Plaintiff, :

-against- : 75 Civ. 1643 (W.K.)

PHILIPS INDUSTRIES, INC., :

Defendant. :

- - - - - x

HAROLD CROGHAN, being duly sworn, deposes and
says:

1. I am secretary, treasurer and general counsel of Philips Industries, Inc. ("Philips"), a corporation organized under the laws of the State of Ohio and having its principal place of business in Dayton, Ohio. I am fully familiar with the scope and nature of Philips' business and the matters referred to in the complaint of Framen Steel Supply Company, Inc. ("Framen"). I submit this affidavit in support of Philips' motion to dismiss this action for lack of personal jurisdiction over Philips.

2. Service of a summons and the complaint in this action was made upon me on or about April 10, 1975 at Philips' offices at 4801 Springfield Street, Dayton (Riverside), Ohio.

A. PHILIPS DOES NOT "DO
BUSINESS" IN NEW YORK

3. Philips has no office, product distribution center or manufacturing facilities in New York.

4. Philips neither owns nor rents real property located in New York.

5. Philips has no personal property in New York.

6. Philips has no New York bank or securities accounts and no New York telephone number or mailing address. 26a

7. No officer, director or employee of Philips resides within the State of New York and Philips' shareholders' and directors' meetings are held in Dayton, Ohio.

8. During and after the time of the matters referred to in the complaint Philips was not qualified to do business in New York; it is not now qualified to do business in New York.

B. PHILIPS DID NOT "TRANSACT BUSINESS" IN NEW YORK IN CONNECTION WITH ITS ORDER AND CANCELLATION WITH FRAMEN

9. On information and belief Framen is a broker of steel of foreign manufacture, principally of German and Italian origin. None of the steel products referred to in the complaint were, or were to be, manufactured in New York.

10. Framen solicited Philips' business by telephone calls to employees at Philips' manufacturing facilities in Nicholasville, Kentucky. There have never been any face to face personal visits between employees of Framen and Philips in New York.

11. The cancelled purchase orders, to which the complaint refers, were prepared and executed in Nicholasville, Kentucky. Because Philips has its principal place of business in Ohio, each purchase order expressly provides:

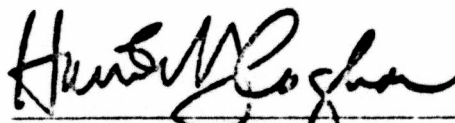
"APPLICABLE LAW

Rights and duties of the Phillips and Seller parties hereto shall be determined by the laws of Ohio and to that end this agreement shall be construed and considered as a contract made and to be performed in Ohio."

Xerox copies of the front sides of the purchase orders and their full or partial cancellations are annexed hereto as Exhibits A, B and C for the three orders and cancellations, respectively. Each of the purchase orders and cancellations incorporated the terms and conditions appearing on the reverse side thereof, in the form annexed hereto as Exhibit D.

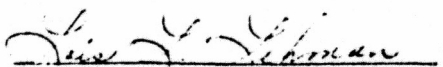
13. Framen has advised Philips that the steel products with which it expected to fill Philips' cancelled orders have been in storage in a warehouse located in or near Philadelphia, Pennsylvania.

14. Under the cancelled orders, delivery of the goods was to be made in Nicholasville, Kentucky and Framen "assume[d] all responsibility for risk and loss or other damage to all articles and materials ordered hereunder or in its custody until actually delivered "FOB shipping point" to Philips Industries, Inc., or any of its subsidiaries or affiliates and accepted thereby."



Harold Craghan

Sworn to before me this
15th day of May, 1975



Notary Public

My Comm. Expires May 14, 1975

STATE OF OHIO)
County of Montgomery ss.

I, JESSE YODER, Clerk of the Common Pleas Court in and for said County, which is a court of Record, having a seal, do hereby certify that Levi T. Leisner

whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and therein written, was at the time of so taking such proof of acknowledgment a NOTARY PUBLIC in and for said County, duly commissioned and qualified and duly authorized to take the same, and to take and certify the proof and acknowledgment of deeds by the laws of this State; and further, that I am acquainted with his handwriting, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of Ohio. The impression of the Notary's seal not required to be filed in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in the City of Dayton, this 16 day of

No. 61135

May 1915
Jesse Yoder, Clerk.

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT:

MAIL INVOICE IN
DUPLICATE TO:
3801 SPRINGFIELD ST.
P.O. BOX 943
DAYTON, OHIO 45401-0943

EXHIBIT A - PURCHASE ORDER NO. 12-46509
WITH FULL CANCELLATION

PHILLIPS
INDUSTRIES
INC.

Page 1 of 2

ST. JAMES WILLIAMS/J.
PURCHASE ORDER 107241
NO. - 12-46509 29a

Page 1 of 2
P.O. NO. MUST APPEAR ON ALL CUST.
INVOICES & CORRESPONDENCE
PART NO. MUST APPEAR ON ALL
C.S. INVOICES & CORRESPONDENCE
ACKNOWLEDGE IF UNABLE TO
DELIVER BY DAY REQUIRED

TO: Western Steel
1 World Trade Center
Suite 1607
127 West, New York, N.Y. 10044
Attention: Robin Jones

SHIP TO: Phillips Group
10000 Drive
Cincinnati, Kentucky 45256
Attention: Dan Williams - PC

ENDOR NO.	DATE ORDERED 8/9/74	SHIP VIA Best way
DATE REQUIRED -SEE BELOW-	TERMS N/30	F.O.B. SP

THIS ORDER IS:	STATE SALES TAX
<input checked="" type="checkbox"/> CONFIRMING (DO NOT DUPLICATE)	<input type="checkbox"/> TAXABLE
<input type="checkbox"/> NON-CONFIRMING	<input type="checkbox"/> NON-TAXABLE

QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
150	Tons		.075 Min. 44.82" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	\$19.10/CWT	
80	Tons		.084 Min. 45.62" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	18.95/cwt	/
80	Tons		.084 Min. 36.50" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	18.95/cwt	/
50	Tons		.081 Min. 55.06" x coil HRCQ 10 T Max. Coils 20"-24" I.D.		
All the above material will ship in September and arrive in October.					
150	Tons		.075 Min. 44.32" x Coil HRCQ 10T Max. Coils 20-24 I.D.	19.10/cwt	/
40	Tons		.084 Min. 57.50" x coil HRCQ	19.45/cwt	/
All of above material will ship October and arrive November					
175	Tons		.075 M 44.32" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	19.10/cwt	/
80	Tons		.081 M 55.06" x coil HRCQ 10 T Max. Coils 20"-24" I.D.	19.45/cwt	/

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM NO.	ACCOUNT NO.	ITEM NO.	ACCOUNT NO.
EX EXEMPT NUMBER			
RECEIVING DEPT. UPON RECEIPT OF MATERIAL NOTIFY:			

BY

[Signature]
PURCHASING AGENT

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-1171

MAIL INVOICE IN
DUPLICATE TO:

4605 SPRINGFIELD ST.
P.O. BOX 1048
DAYTON, OHIO 45401-048

30a

PHILIPES
INDUSTRIES
INC.

Page 2 of 2

CO: J. Williams/J. J. J.

PURCHASE ORDER

NO. - 1111111111

P.O. NO. MUST APPEAR ON ALL CUST.
INVOICES & CORRESPONDENCE
PART NO. MUST APPEAR ON ALL
PKGS. INVOICES & CORRESPONDENCE
ACKNOWLEDGE IF UNABLE TO
DELIVER BY DAY REQUIRED.

TO: Phillips Center
1000 100th
New York, New York 10048
Attention: John J. J.

SHIP TO: Phillips Group

210 100th Drive

Shelbyville, Kentucky 40156
Attention: Dan Williams - PC

VENDOR NO.	DATE ORDERED 3/12/74	SHIP VIA BASE WAY
DATE REQUIRED 12/1/74	TERMS n/30	F.O.B. DP

THIS ORDER IS:

☒ CONFIRMING
(DO NOT DUPLICATE)

☐ NON-CONFIRMING

STATE SALES TAX

☐ TAXABLE

☒ NON-TAXABLE

ITEM #	QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
1	75	Tons		.034 Min. 36.50" x coil HRCQ	\$13.95/cwt	
				10 T Max. Coils		
				20"-24" I.D.		
				in November		
				***All of above material will ship/and arrive		
				in December, '74.		
2	75	Tons		.075 Min. 44.82" x coil HRCQ	19.45/cwt	
				10T Max. Coil		
				20"-24" I.D.		
3	50	Tons		.081 Min. 55.06" x coil HRCQ	19.45/cwt	
				10 T Max. Coils		
4	20	Tons		20"-24" I.D.		
				.065 Min. 55.31" x Coil HRCQ	19.45/cwt	
				10T Max. Coils		
				20"-24" I.D.		
				***All material will ship December '74 and arrive		
				January '75		
PO authorized by Earl 8/9/74. Henry						
has he left. Tell Earl Baker would call him around						
Any with steel to alter 8/9/74						

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
TAX EXEMPT NUMBER			
125545			
RECEIVING DEPT. UPON RECEIPT OF MATERIAL NOTIFY			

BY

PURCHASING AGENT

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171

TO:

RESEARCH DESIGN

DIHILL PPS
INDUSTRIES
INC.

NO. NO. MUST ARE OF ALL CURE.
 2. PIONEER RECORDS. PIONEER
 3. PART NO. MUST ARE OF ALL
 4. PIONEER RECORDS. PIONEER
 5. RECORDS. PIONEER RECORDS.
 6. RECORDS. PIONEER RECORDS.
 7. RECORDS. PIONEER RECORDS.

To: Frank Steel
1 World Trade Center
Suite 4667
New York, New York 10048
Attn: Rubin Polne

EMP TO Alliance Group

200 Peter Nelson

Michalsville, Kentucky 40356

Attention: Dan Williams - PC

UNSCORRO	DATE ORDERED	SHIP VIA
originally--8/9/74	today--10/15/74	BEST WAY
DATE REQUIRED →	TERMS	F.O.B.
SEE BELOW	N/30	SP

THIS ORDER IS:

☒ CONTINUING
☐ DO NOT DUPLICATE

☐ NON CONFIRMING

STATE SALES TAX

7/11/61	7/11/61
---------	---------

☒ NON-TAXABLE

TYPE	QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
				<u>THIS ORDER NOW READS IN PART:</u>		
				SEE ORIGINAL ORDER FOR DETAILS AS TO ITEMS ORDERED.		
				<u>PLEASE CHANGE TO READ:</u>		
				PLEASE CANCEL ITEMS #10, #11, & #12		
				VJ		

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)		ACCOUNT NO.	

TAX. AMT. NUMBER

126645

RECEIVING DEPT. UPON RECEIPT OF MATERIAL NOTIFY:

G. Allman

114

TURNING AGENT

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (613) 753-7171

BEST COPY AVAILABLE

Y. I. I. N. 213

PHILLIPS
INDUSTRIES
INC. 1964

* DELIVERY OF ALL CEMENT
* PROVIDED IMMEDIATELY
* PARTIAL MUST BE IN ALL
* FULLY INSPECTED AND APPROVED
* FURNISHING IS UNABLE TO
* DELIVER BY DAY REQUIRED.

Franklin Street
1 World Trade Center
Suite 4667
New York, New York 10048
Attn: Rubin Polne

one to Appliance Division

200 Etter Drive

Nicholasville, Kentucky 40356

Attn: Pete Johnson - PC/Satch/Allen

THIS ORDER IS:

STATE SALES TAX

☒ CONFIRMING (DO NOT DUPLICATE)

☐ TAXABLE

☐ NON-CONFIRMING

☒ NON-TAXABLE

VERSION 1.0.

DATE ORDERED

SHIP VIA

6/74 BEST WAY

6.05

... S.P.

DATE REQUIRED ☒

TERMS

4. N/30

See Below

[illegible]

PLEASE CANCEL THIS ENTIRE ORDER IMMEDIATELY!

THIS PURCHASE ORDER SUBJECT

ITEM(S)	ACCOUNT NO.
	12-00-1210

TAX EXEMPT NUMBER

126645

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:

C. Allman/J. Smith/P. Johnson

NOTICE

ALL CARTONS, BUNDLES, CRATES, AND
PALLETS MUST SHOW THE NICHOLAS-
VILLE PART NUMBER AND PURCHASE
ORDER NUMBER ON THE OUTSIDE OF
EACH PACKAGE. EACH INVOICE AND
PACKING SLIP MUST CARRY THE PROPER
NICHOLASVILLE PART NUMBER AND
PURCHASE ORDER NUMBER. FAILURE TO
FOLLOW THESE DIRECTIONS WILL DELAY
PAYMENT OF INVOICE.

ON THE FACE AND REVERSE SIDE HEREOF.

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 252-7171

VENDOR

Exhibit 1

MAIL INVOICE IN
DUPLICATE TO:

4861 SPRINGFIELD ST.
P.O. BOX 943
DAYTON, OHIO 45401-0943

EXHIBIT B - PURCHASE ORDER NO. 12-46566

PURCHASE ORDER
NO. - 12-46566 33a

- P.O. NO. MUST APPEAR ON ALL INVOICES & CORRESPONDENCE
- PART NO. MUST APPEAR ON ALL PKGS. INVOICES & CORRESPONDENCE
- ACKNOWLEDGE IF UNABLE TO DELIVER BY DAY REQUIRED.

TO:
1000 Trade Center
New York, New York 10048

SHIP TO:
1000 Trade Center

Attn: J. Morgan & G. Allman

VENDOR NO.	DATE ORDERED 12/20/74	SHIP VIA F.O.B.
DATE REQUIRED 12/30	TERMS 1/30	Philadelpha, Penna/Ala

THIS ORDER IS:

☐ CONFIRMING
(DO NOT DUPLICATE)

☐ NON-CONFIRMING

STATE SALES TAX

☐ TAXABLE

☐ NON TAXABLE

ITEM	QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
				THIS ORDER NOW READS IN PART:		
1	100	Tons		.066 44.38" X Coil HRCQ	\$19.45/ton	
				50/Tons - Nov. Shipment - Arrive Dec. '74		
				50/Tons - Dec. Shipment - Arrive Jan. '75		
				10 Ton - Max. Coils		
				20"x-24" I.D.		
				TOYOTA Pass. Page Number 12-46566-00		
				PLEASE CHANGE TO READ:		
2	50	Tons		.066 44.38" x coil HRCQ	\$19.45/ton	
				REQUIRED: 50/Tons		
				CANCEL 50/Tons due to shipment - Arrive Jan. '75		
				remains the same.		

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
	12-CC-1210		
TAX EXEMPT NUMBER			
12-46566			
RECEIVING DEPT. UPON RECEIPT OF MATERIAL NOTIFY:			
C. Allman/J. Morgan			

BY: *[Signature]*
PURCHASING AGENT

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-1171

001-00114/Alban/Thomas
PURCHASE ORDER
 NO.- 001-00114

101 SPRINGFIELD ST
BOSTON, MASS 02108
RAYMOND, BRUCE A

PHILIPS
INDUSTRIES
INC.

- ▶ P.O. NO. MUST APPEAR ON ALL CUST. INVOICES & CORRESPONDENCE
- ▶ PART NO. MUST APPEAR ON ALL PKGS. INVOICES & CORRESPONDENCE
- ▶ ACKNOWLEDGE IF UNABLE TO DELIVER BY DAY REQUIRED

10. John H. Hest
World Trade Center
Box 10657
New York,
New York 10048

SHIP TO: Appliance Division
200 West Drive
Michigan City, Ind. 40356
 (Name) 1421 Albany son

VENDOR NO	DATE ORDERED	SHIP VIA
original	11-5/20/74 today-12	5/74 EAST HAV
DATE REQUIRED →	TERMS	F.O.B.
See below	N/30	Philadelphia, Pennsylvania

THIS ORDER IS:

☒ CONFIRMING
(DO NOT DUPLICATE)

☐ NON-CONFIRMING

STATE SALES TAX

☐ TAXABLE

☒ NON-TAXABLE

QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
			THIS ORDER NOW READS IN PART:		
20	Tons		.086 44.38" x Coll BRQ	\$19.45/CST	
			PLEASE CHANGE TO READ:		
			CANCEL THIS ENTIRE ORDER IMMEDIATELY!		
			VI		

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
	12-00-1210		

AN EXEMPT NUMBER
120645

RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:

Alman/2 Johnson/T Smith

BY [Signature]
PURCHASING AGENT

**VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171**

PHILADELPHIA INDUSTRIES

Patron Steel

Ship to Appliance Group

1000 Trade Center, New York, New York 10040

200 E. 10th St., Dayton, Ohio 45402

New York, New York 10040

Nicholasville, Kentucky 40356

Attention: John Morgan and Geo

THIS ORDER IS: ☒ **ALL IN** ☐ **STATE SALES**

☒ **CONFIRMING** ☐ **100 NO DUPLICATES**

☒ **TAXABLE** ☐ **NON-TAX**

☒ **CONFIRMING** ☐ **100 NO DUPLICATES**

☒ **CONFIRMING** ☐ **100 NO DUPLICATES**

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☒ **CONFIRMING** ☐ **100 NO DUPLICATES**

☒ **CONFIRMING** ☐ **100 NO DUPLICATES**

☒ **CONFIRMING** ☐ **100 NO DUPLICATES**

ITEM NO.	QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	QUANTITY RECEIVED
1	100	Tons	056 44 38	Coil HRCQ	100
				50 Tons - November Ship - arrive Dec '77	
				50 Tons - December Ship - arrive Jan. '78	
				20"-24" I.D.	
				Temp. Pass	
				Part No. #NR 18-1413-00	

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
12-10-1220			
12-10-5900			

126645

RECEIVING DEPT. UNION TRUST OF INDUSTRIAL ROYALTY

George Allan and John Morgan

BY

George Allan

VICE PRESIDENT MANUFACTURING SERVICES LOCATED

200 E. 10th St., Dayton, Ohio 45402

36a

MAIL INVOICE IN
DUPLICATE TO:1501 SPRINGFIELD ST.
P.O. BOX 945
DAYTON, OHIO 45401EXHIBIT C - PURCHASE ORDER NO. 12-46775
WITH PARTIAL CANCELLATIONPHILIP'S
INDUSTRIES
INC.COT. Dan Williams & J.
PURCHASE ORDER Morgan
NO. - 12-46775

- ✓
- P.O. NO. MUST APPEAR ON ALL CUST. INVOICES & CORRESPONDENCE
 - PART NO. MUST APPEAR ON ALL PKGS. INVOICES & CORRESPONDENCE
 - ACKNOWLEDGE IF UNABLE TO DELIVER BY DAY REQUIRED.

SHIP TO
1501 Springfield St.
P.O. Box 945
Dayton, Ohio 45401
Attention: Dan Williams & J. Morgan

SHIP TO

Attention: Dan Williams, J. Morgan

VENDOR NO.	DATE ORDERED 1/3/74	SHIP VIA NEXT DAY
DATE REQUIRED	TERMS 1/30	FOB PHILADELPHIA, PENNSYL-

THIS ORDER IS:

☒ CONFIRMING
(DO NOT DUPLICATE)

☐ NON-CONFIRMING

STATE SALES TAX

☐ TAXABLE

☐ NON TAXABLE

ITEM	QUANTITY ORDERED	UNIT	PART NO.	DESCRIPTION	UNIT PRICE	QUANTITY RECEIVED
1	200	TONS		.066 55.31" x coil HRCO 20"-24" ID <i>Part # NR 12-1414-00</i> 10 Tons Maximum coils November ship-arrive December '74	\$19.45/cwt	
2	200	TONS		.084 36.5" x coil HRCO <i>Part # NR 12-1208-01</i> 20"-24" ID <i>PO cancelled by Exp. P</i> 10 Ton Maximum Coils November ship -- arrive December '74	13.95/cwt	✓ <i>8/9 on 12-46775 on 7/3</i>
3	100	TONS		.075 35.24" x coil HRCO <i>Part # NR 12-1429-00</i> 20"-24" ID 10 Ton Max Coils Dec. ship -- arrive January '75	22.10/cwt	
4	100	TONS		.084 45.62" coil HRCO; 20"-24" ID; 10Ton Max Coils; December ship -- Arrive Jan. '75 VJ <i>Part # NR 12-1208-01</i>	18.95/cwt	

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF.

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
	12-CC-1210		
TAX EXEMPT NUMBER 126645			
RECEIVING DEPT. UPON RECEIPT OF MATERIAL NOTIFY: Dan Williams & J. Morgan			

BY

PURCHASING AGENT

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (513) 253-7171

SHIP TO Appliance Group

200" ether Drive

Nicholsville, Ky. 40356
Attn: D. Williams/ J. Morgan

THIS ORDER IS: **Final** **GRATIS**

☒ CONFIDENTIAL (DO NOT DUPLICATE)

TAXABLE

☐ NON-CONFIRMING

1504-7220

VERSION NO.	DATE ORDERED	SHEETS
original	9/3/74 Today-10/16/74	BEST WAY
DATE REQUIRED	TERMS	P.O.B.
SEE BELOW	N/30	Philadelphia, Pennsylv.

[illegible]

THIS PURCHASE ORDER SUBJECT TO ALL TERMS & CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF

ITEM(S)	ACCOUNT NO.	ITEM(S)	ACCOUNT NO.
	12-00-1210		
TAX EXEMPT NUMBER			
126645			
RECEIVING DEPT: UPON RECEIPT OF MATERIAL NOTIFY:			
Williams - J. Morgan			

BY George Allen
PURCHASING AGENT

VICE PRESIDENT MANUFACTURING SERVICES LOCATED
DAYTON, OHIO PHONE (610) 262-7171

VENDOR

EXHIBIT D - TERMS AND CONDITIONS

TERMS, PROVISIONS AND CONDITIONS

39a

1. This order is made by the undersigned in accordance with the terms and conditions of the contract of purchase and sale of the goods and materials specified in the order and in the accompanying drawings and specifications. The undersigned hereby certifies that the goods and materials are to be used for the purpose specified in the order and in the accompanying drawings and specifications. The undersigned hereby certifies that the goods and materials are to be used for the purpose specified in the order and in the accompanying drawings and specifications. The undersigned hereby certifies that the goods and materials are to be used for the purpose specified in the order and in the accompanying drawings and specifications.

Shipping, Transportation, etc.

Seller shall carefully pack and ship goods, and shall insure goods against loss or damage in transit. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance.

Delivery

Delivery shall be made in accordance with the terms and conditions of the contract of purchase and sale of the goods and materials specified in the order and in the accompanying drawings and specifications. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance.

COPIES

Customer agrees to indemnify and hold Seller harmless from all claims, damages, and expenses, including reasonable attorneys' fees, arising out of or from the use of the goods and materials.

Inspection

Goods shall be inspected by the customer within the time specified in the order and in the accompanying drawings and specifications. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance.

Warranty as to Quality

Seller warrants that all articles, materials, parts, and work covered by this order shall conform to the drawings and specifications. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance.

Warranty as to Patents

Seller warrants that the goods covered by this order and the design or use of them will not infringe any United States or foreign patent, and that Seller agrees to defend, protect, or save harmless Philips, its subsidiary or affiliate companies, its officers, employees, and agents, from all claims, damages, and expenses, including reasonable attorneys' fees, arising out of or from the use of the goods and materials.

Compliance with Laws

Seller warrants that the goods and materials made under this order are and shall be produced in compliance with the Fair Labor Standards Act of 1938, as amended, and all applicable Federal, State, and local laws, regulations, and orders of public authority. Seller also agrees to furnish Philips with satisfactory evidence of compliance with any such laws, regulations, and orders of public authority.

Special Tooling

Unless otherwise herein agreed, Seller at its own expense shall furnish, keep in good condition and replace when necessary, all dies, tools, jigs, fixtures, and patterns necessary for the production of any goods or materials ordered by Philips. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance.

Philips Owned Materials and Tooling

Seller hereby expressly agrees to hold, protect, and to protect Philips against loss of or damage to, all tools, jigs, fixtures, and patterns, and all equipment and products in the possession or control of Seller, with the exception of normal wear and tear, and to replace or repair such tools, jigs, fixtures, and patterns, and all equipment and products in the possession or control of Seller, with the exception of normal wear and tear, and to replace or repair such tools, jigs, fixtures, and patterns.

Indemnification on Contracts for Services

If Seller is to perform services for Philips or Philips premises or elsewhere, Seller agrees to indemnify and hold harmless Philips against any and all liabilities, claims, demands, litigation, and losses, including reasonable attorneys' fees, arising out of or from the performance of such services by Seller or its employees, agents, or subcontractors.

Cancellation with Cause

Philips, its subsidiary or affiliate company, reserves the right to cancel this order partially or completely, in whole or in part, at any time, without cause or default of Seller, and to give the Seller notice of such cancellation. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance.

Cancellation without Cause

Philips reserves the right to cancel this order, in whole or in part, at any time, without cause or default of Seller, and to give the Seller notice of such cancellation. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance. Seller shall be responsible for the cost of shipping, transportation, and insurance. No charge will be made for shipping, transportation, and insurance.

Applicable Law

This contract shall be governed by the laws of the State of New York, and the parties hereby agree to submit to the jurisdiction of the courts of the State of New York for the purpose of enforcing this contract.

Entire Agreement

This contract constitutes the entire agreement between the parties, and no oral or written agreement, understanding, or representation shall be binding on the parties unless it is in writing and signed by both parties.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals at the City of New York, New York, this 1st day of January, 1961.

By _____, Secretary

By _____, President

By _____, Vice President

By _____, Treasurer

By _____, Secretary

AFFIDAVIT OF RUBIN POLNE IN OPPOSITION TO MOTION TO
DISMISS (Filed June 25, 1975)

40a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FRAMEN STEEL SUPPLY COMPANY, INC., :

Plaintiff, :

75 Civ 1643 (W.K.)

-against- :

AFFIDAVIT IN OPPOSITION
TO MOTION TO DISMISS

PHILIPS INDUSTRIES, INC., :

Defendant. :

-----X
STATE OF NEW YORK)

COUNTY OF NEW YORK)

ss:

RUBEN POLNE, being duly sworn, deposes and says:

1. I am the General Sales Manager of plaintiff, Framen Steel Supply Company, Inc. ("Framen"), a corporation organized under the laws of the State of New York, having its principal place of business in New York, New York. I am fully familiar with the scope and nature of Framen's business and was personally involved in the transactions involved in the complaint. I submit this affidavit in opposition to Philips' motion to dismiss this action for lack of personal jurisdiction.

2. Framen acts as a broker and agent arranging for the purchase and sale of steel. Since 1973, we have acted on Philips' behalf to arrange for the manufacture of various types of steel to Philips' custom specifications. Prior to the transactions set forth in the complaint, we arranged for thirteen different shipments totaling approximately three quarters of a million dollars worth of steel to be manufactured for Philips. On these occasions, we would receive telephone calls from Philips advising us of their specific needs and asking us, in New York, to have the steel specifically manufactured and cut to Philips' detailed specifications. This would be later confirmed by a written purchase order. After

receiving Philips' telephone orders on the orders in 1974, I went to Okaya (U.S.A.) Inc., a Japanese steel trading company, located at 1 World Trade Center, New York, New York 10048, and entered into an agreement with Okaya to have the steel specifically manufactured and cut to Philips' detailed specifications. We would then arrange for the delivery of the steel to Philips and receive their check in New York. I would pay Okaya in New York.

3. Since, as far as we know, Philips does not have a central buying office, we have received these orders from their various divisions. We acted on Philips' behalf for orders shipped to Philips' division in Arlington, Texas, on the following invoice dates:

March 15, 1973
March 22, 1973
March 27, 1973
June 17, 1974
September 3, 1974
September 23, 1974
October 15, 1974

We acted on Philips' behalf with respect to arranging for the manufacture of steel and for shipments to the division at Leola, Pennsylvania on the following invoice dates:

March 13, 1974
April 29, 1974
May 10, 1974
September 9, 1974
September 27, 1974

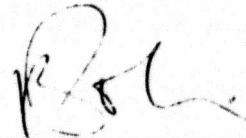
We acted on Philips' behalf in arranging for the manufacture of steel for their division at Nicholasville, Kentucky, for a shipment invoiced on October 30, 1974.

4. It was because of this prior course of dealing that we accepted telephone orders from Philips for the transactions set forth in the complaint. With respect to these transactions, the orders were received from Mr. George Allman, Philips' purchasing agent in Nicholasville, Kentucky. On several occasions,

he called me to arrange to have various types of steel products specifically cut and manufactured for Philips' needs. We accepted the order, contacted Okaya, Inc. in New York and placed the order with them. Since this steel was specifically cut to fit Philips' appliances, it is not usable by anyone else.

5. As a result of Philips' cancellation of the three purchase orders, after the material had been specifically manufactured, not only have we been damaged with respect to the price involved, but we have also been damaged as a result of the loss of good will and reputation which we have sustained with Okaya, Inc. in New York, as a result of this cancellation.

6. Because of the size and extensive scope of Philips' operations, I would assume, although I cannot say as a fact, that Philips likewise engages in regular purchases and sales of numerous other products within New York amounting to substantial sums. Framen, on the other hand, is a small, local company, and it would be a great hardship for us to have to go to Ohio to litigate this case.



Ruben Polne

Sworn to before me this
24th day of June, 1975.

INGRID SCHENING
NOTARY PUBLIC, State of New York
No. 52-8801185, Suffolk County
Term Expires March 30, 1976

PLAINTIFFS CROSS MOTION TO PERMIT DISCOVERY ON THE ISSUE OF
PERSONAL JURISDICTION AND ACCOMPANYING AFFIDAVIT OF SHELDON S.
LUSTIGMAN (Filed June 20, 1975)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

FRAMEN STEEL SUPPLY COMPANY, INC.,	:	75 Civ. 1643 (WK)
Plaintiff,	:	
-against-	:	<u>NOTICE OF CROSS-MOTION</u>
PHILIPS INDUSTRIES, INC.,	:	
Defendant.	:	

-----X

S I R E :

PLEASE TAKE NOTICE that upon the annexed affidavit of Sheldon S. Lustigman, sworn to the 20th day of June, 1975, the accompanying affidavit in opposition to defendant's motion to dismiss this action for lack of personal jurisdiction, and all the prior pleadings herein, the undersigned will, pursuant to Rule 12(d) of the Federal Rules of Civil Procedure, move this Court at the United States Courthouse, courtroom 10, Foley Square, New York, New York, on June 27, 1975 at 2:00 o'clock in the afternoon, or as soon thereafter as counsel may be heard, for an order staying defendant's motion to dismiss for lack of jurisdiction over the person, and permitting plaintiff a reasonable opportunity to undertake discovery proceedings on the issue of the extent of defendant's activities within this jurisdiction in

BEST COPY AVAILABLE

order to determine whether the defendant is properly subject to personal jurisdiction before this Court.

Dated: New York, New York
June 20, 1975

Yours, etc.,

BASS & ULLMAN

By: [Signature]
(A Member of the Firm)

Office and P.O. Address
747 Third Avenue
New York, New York 10017
(212) 751-9494
Attorneys for Plaintiff
Framen Steel Supply
Company, Inc.

TO: SULLIVAN & CROMWELL
48 Wall Street
New York, New York 10005
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

45a

-----X
FRAMEN STEEL SUPPLY COMPANY, INC., : 75 Civ. 1643 (WR)
Plaintiff, :
-against- : AFFIDAVIT IN SUPPORT
PHILIPS INDUSTRIES, INC., : OF CROSS-MOTION
Defendant. :
-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

SHeldon S. LUSTIGMAN, being duly sworn, deposes and says:

1. I am a member of the firm of Bass & Ullman, attorneys for plaintiff herein, am a member of the Bar of this Court and am fully familiar with the proceedings had herein. This affidavit is made of my own knowledge.

2. Defendant has moved to dismiss this action for lack of personal jurisdiction.

3. As is set forth in plaintiff's memorandum of law in opposition to defendant's motion, and the accompanying affidavit of plaintiff's sales manager, Rubin Polne, it appears that the defendant does in fact transact business within the Southern District of New York and should thus be subject to in personam jurisdiction before this Court. However, in the event this Court feels that the evidence presented is insufficient to find personal jurisdiction over the defendant then, in that event, plaintiff respectfully moves that said motion be

adjourned and that plaintiff be permitted a reasonable opportunity to undertake discovery proceedings limited to the issue of defendant's activities within this jurisdiction.

4. For the reasons set forth in plaintiff's accompanying memorandum of law in support of this motion, such a procedure is proper since the facts relating to defendant's activities within the jurisdiction are peculiarly within the defendant's knowledge.

5. As is set forth in the 1974 Annual Report of Philips Industries, Inc., a copy of which is annexed hereto as Exhibit A, it appears that defendant is a very large multifaceted corporation engaged in the manufacture and sale of numerous types of consumer industrial products. Defendant's stock is traded on the New York Stock Exchange. Morgan Guaranty Trust Company of New York, which is located within the Southern District of New York, is listed as both the registrar and the transfer agent for the company.

6. In support of its motion to dismiss, defendant has submitted an affidavit from Harold Croghan, its secretary and general counsel. In paragraph 6 of this affidavit, Mr. Croghan states that "Philips has no New York bank or securities accounts" On June 19, 1975, I spoke with Miss Lorraine Rinaldo of Morgan Guaranty Trust Company, who advised me that in addition to being the transfer agent and registrar for Philips, Morgan Guaranty is also in charge of paying the dividends on the common and preferred Philips stock and that Morgan Guaranty actually prepares the checks and mails them to the stockholders from a dividend account.

7. Significantly, Mr. Croghan's affidavit does not state that Philips does not have any agents within the Southern District of New York. This, of course, is one of the critical tests in determining whether a foreign corporation is transacting business within a jurisdiction. Aside from Morgan Guaranty being an agent for Philips, in view of the extensive nature of Philips' activities, it appears probable that Philips may have other agents within the jurisdiction.

8. Furthermore, since Philips was ordering substantial quantities of steel from the New York plaintiff, it appears probable that they also regularly purchase and sell substantial quantities of other material within this jurisdiction. It further appears likely that employees of Philips come into the jurisdiction in connection with purchases and sales of its products. Such information is peculiarly within defendant's knowledge and could be elicited in discovery proceedings. Such discovery proceedings would enable plaintiff to establish that defendant had sufficient contacts within this jurisdiction in order to be subject to the jurisdiction of this Court.

9. For all of the foregoing reasons, it is respectfully requested that in the event this Court feels that plaintiff's supporting papers are insufficient to establish that defendant transacted business within this jurisdiction, that defendant's motion to dismiss for lack of personal jurisdiction be held in abeyance and that plaintiff be permitted a reasonable opportunity to conduct discovery proceedings on the issue of defendant's activities within the state.

SHELDON E. LUSTIGMAN

Sworn to before me this
20th day of June, 1975

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EXHIBIT A - COPY OF ANNUAL REPORT OF PHILIPS INDUSTRIES, INC.
ANNEXED TO FOREGOING AFFIDAVIT

Philips Industries Inc. Annual Report, March 31, 1974



In fiscal 1974, Philips Industries experienced a reduction in sales volume and earnings, as compared to the prior year. This report reviews the circumstances in the national economy and our company that combined to produce these results as well as the steps that your management took to contain them.

In these pages we will look at our continuing movement into new markets and new products.

Summary of Earnings

Year Ended March 31	Net Sales	Net Income After Taxes	Earnings Per Share
1974	\$202,580,000	\$2,751,000	\$.38
1973	216,031,000	6,635,000	1.10
1972	186,701,000	6,477,000	1.10
1971	141,867,000	3,973,000	.65
1970	137,246,000	4,642,000	.80
1969	123,894,000	5,995,000	1.07
1968	58,396,000	2,815,000	.66
1967	39,828,000	1,006,000	.26
1966	34,989,000	1,690,000	.48
1965	16,573,000	569,000	.22

See notes to ten-year highlights, page 24.

The "Möbius Delta" by Forbes Whiteside, which appears on the cover, is displayed in the reception area of Philips Industries' corporate headquarters in Dayton, Ohio.

To our shareholders:

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In the face of substantial reductions in the production of mobile homes and recreational vehicles, our company's sales for the year ended March 31, 1974, declined to \$202,580,000 from \$216,031,000 reported a year ago. Because of this loss in sales volume combined with the continuing increases in the prices we have had to pay for raw materials, our net income after taxes was \$2,751,000, or \$.38 per common share, compared with \$6,635,000 or \$1.10 a share a year ago.

The loss in sales volume was due to the impact of the energy crisis on the recreational vehicle industry and the limited availability and high cost of financing for mobile homes. Sales of our components for these industries, which represented 65% of our total a year ago, came to only 56% in the year just ended. Fortunately, the balanced market mix that we had achieved in the preceding years through our Lasco, Lau and Malta Divisions helped to lessen the impact of this loss of volume. As you will see in the pages of this report, it is your company's policy and plan to improve this balance by continuing to develop new products and enter new markets.

In the final weeks of the year, the relaxing of the fuel shortage opened the door to a partial revival in the production of recreational vehicles. Mobile home sales have increased on a month-to-month basis since January. Sales of our Lau Industries and Lasco Industries Divisions are strong. It is our expectation that, if interest rates decline, all construction, including mobile and conventional housing, should show sharp improvement.

We are enthusiastic about the opportunities opened up for increased sales growth by our entry into the domestic and commercial water heater business. In addition, we have noted a trend toward increased production of double-

wide mobile homes. An indicator that the industry is moving out of the strictly low-priced home market into the middle range. This trend should continue and provide an improved market for our quality components.

We wish to express our sincere appreciation to our management and personnel who grasped the importance of our cost reduction and quality improvement programs and contributed their individual efforts to making them more effective.



Jesse Philips
Chairman and Chief Executive Officer



Report of Operations

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In fiscal 1974, the most important influence on our company's operations was the curtailment of production in our major markets, the mobile home and recreational vehicle industries. In addition, all of our Divisions were faced with increased costs of raw materials and components and, to varying degrees with shortages of critical materials.

During the year, we acquired the Day & Night water heater business of the Carrier Corporation and we are now completing construction of a 270,000 square foot plant in Nicholasville, Kentucky, for the production of domestic and commercial water heaters. Heavy start-up costs for this plant were charged against current operations, as were costs involved in discontinuing operations at our recreational vehicle water heater plant at Brighton, Michigan, and transferring its production to the new Nicholasville facility.

Other non-recurring costs were incurred in the start-up of a new Lau Industries plant in El Reno, Oklahoma, and a new Lasco Industries fiberglass tub and shower plant in Cordele, Georgia. For the future, however, Lau now has the facilities to expand its business in the Southwest and Lasco is in a position to build strong new sales volume in the Southeast.

In addition to these non-recurring costs and higher interest costs, it is clear that the widely recognized decline in recreational vehicle and mobile home production had a major impact on our fiscal 1974 results. Sales of our Manufactured Housing/Recreational Vehicle Components Division were 18% below fiscal 1973 sales. At the same time, Malta Division sales rose 2%, the Lau Industries Division sales were up 9% and Lasco Industries Division sales increased 31%.

Our newly-organized Philips Interiors Division, also grew in sales volume through acquisition during the past year. Early in fiscal 1974 the Cherokee Baiting Company, Inc. became a part of Philips Interiors and we completed acquisition of the TaylorMade Corp. in September, of last year.

The profitability of all of our sales results was impacted throughout the year by the inflationary spiral involving our entire economy. While the Federal Government's Economic Stabilization Program delayed our adoption of selling price increases, we had to absorb substantial increases especially in steel, aluminum, glass and plastic costs. This pattern, of course, continues but we have been able to effect a number of price increases in recent weeks and we are reviewing all selling prices on a continuing basis with a view to passing on cost increases as they are incurred.

During the past year, relations between our company and its employees were mutually satisfactory. As the year ended, a work stoppage occurred at our Crossville, Tennessee plant. Negotiations are continuing and we are hopeful of an early settlement.

We report with regret the retirement of Vernon Sailor, President of our subsidiary, Versail Manufacturing, Inc., a pioneer in mobile home door design and production. His contribution to the growth of our MH/RV Components Division and his personal counsel have been significant and always will be appreciated.

Shortly after the close of the year, we strengthened the Corporate President's Office by appointing John Kloap to the new position of Vice President, Manufacturing. He has an extensive background in manufacturing management in diversified fields and will provide valuable counsel and assistance to all of our Divisions.

With a difficult year behind us, your company is prepared to meet the changing, hopefully improved circumstances of the coming year with a lean organization, strengthened by experience. We maintain a clear eye on the future, on growth through new products and new markets, just as we concentrate on profitability through operating efficiency in today's markets.



Robert Levenstein
President and Chief Operating Officer



Philips Industries...

New products, new markets

53a

Until 1970, Philips Industries and its subsidiaries sold virtually 100% of our production to the mobile home and recreational vehicle industries. With the acquisition of the companies that now make up our Lasco, Lau and Malta Divisions, we began to move for the first time as a supplier to other elements of the construction industry, particularly on-site housing and high-rise dwellings.

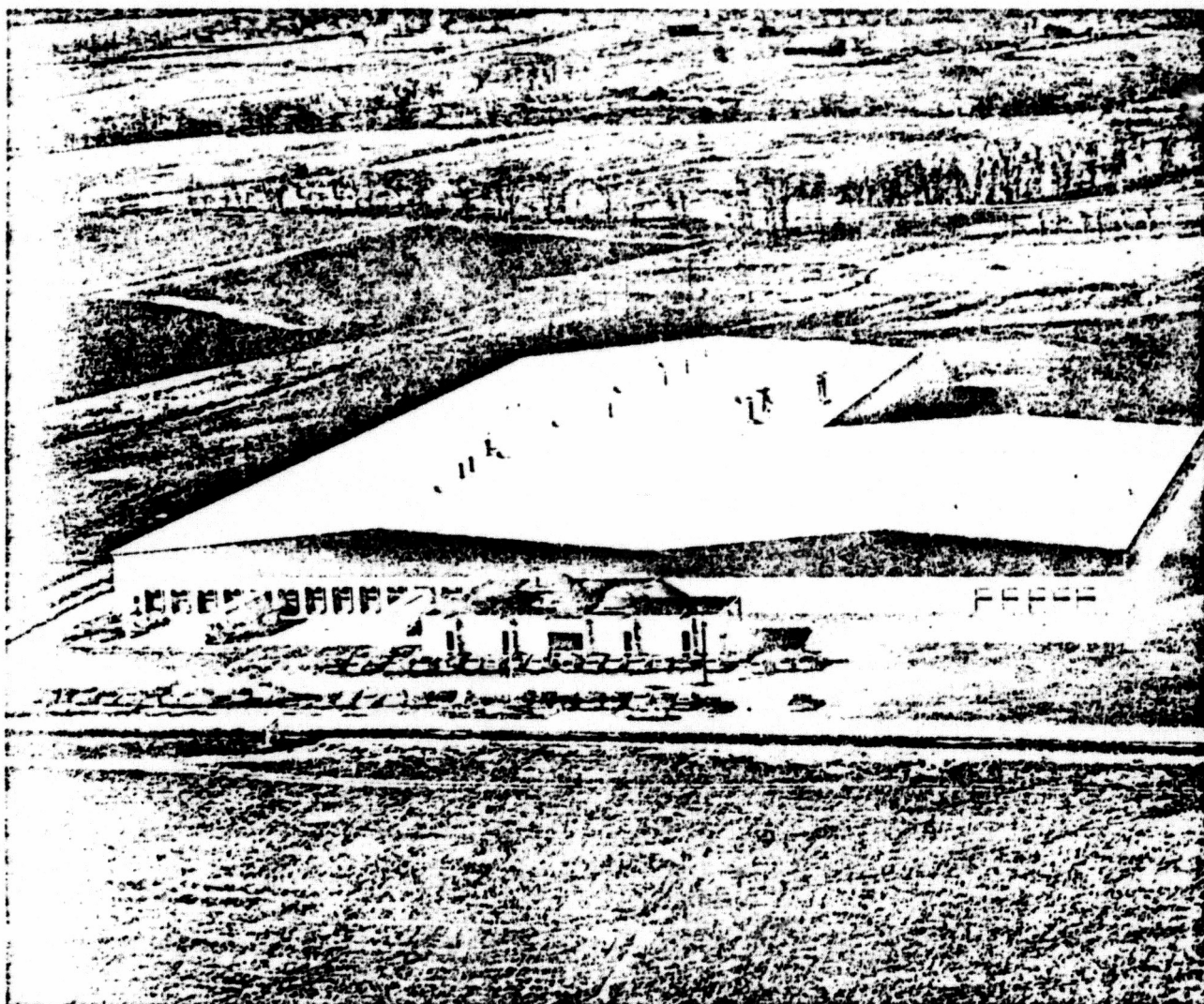
Last year, while it is true that mobile home and recreational vehicle component sales were lower because of economic factors, our sales of products to other markets were increased. As a result, MH/RV Division sales in fiscal 1974 represented only 56% of our total sales compared with 100% four years ago. As clear evidence of our continuing development as a balanced supplier to all segments of the construction industry, sales of Lasco, Lau and Malta products now represent 42% of our total. In the following pages, our continuing progress in diversification of markets is outlined.

During the past year, these three Divisions took steps to expand their sales potential by the development of new

products or the penetration of new markets. These steps will provide a broader marketing base for our company's future growth outside of the manufactured housing and recreational vehicle industries.

Equally significant, however, is the development within our MH/RV Division of plans and products for different markets. The Division last year launched several new products for markets that it had only begun to penetrate... new brake assemblies for utility trailers, doors and windows for sectional housing. In addition, drawing on established technological experience and production capabilities, the division entered completely new markets with new sales potential.

Our MH/RV Division enters the market for residential and commercial water heaters with the completion of this Nicholasville, Kentucky facility.



Lasco Industries Division

1974 Sales—\$28,181,000, up 31% over 1973
14% of total corporate sales

The Lasco Division which produces plastic pipe and fittings, fiberglass building panels and fiberglass tubs and showers, showed record sales for the year.

In September, production started in the newly completed tub and shower plant in Cordele, Georgia, but sales were below prior estimates because of the slow-down in the mobile home industry. A new plant for fittings is slated for construction in Brownsville, Tennessee, with projected completion during the Summer. This plant will increase production capacity to meet increasing demand and provide better service to customers in the Southeast. In addition

to these two plants, the Division operates four other manufacturing facilities and three warehouses which provide nationwide distribution for most of its products.

Tight raw material supply should restrict the Division's sales growth, but continuing effective material control and cost cutting programs are designed to increase Lasco's profitability in fiscal 1975.

Shortly after the close of the year, Roderick Lynch became Chairman of the Board of Directors of the Division and Michael Cafarchia, Secretary and Vice President-Finance, was named President.

Roderick Lynch, left, Chairman, and Michael Cafarchia, President, review some of the Lasco Division's industry-leading line of plastic pipe fittings.



Lau Industries Division

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1974 Sales - \$40,338,000, up 9% over 1973
20% of total corporate sales

The Lau Industries Division last year opened its ninth plant for the manufacture of blowers, propellers, fans and other components for heating, cooling and humidifying equipment, and a range of home and light commercial humidifiers. The new plant, in El Reno, Oklahoma, will become fully productive in the new year and will enable the Division to serve a larger share of the rapidly expanding market in the Southwest. In addition, the Belgium plant, serving the European market, was expanded. International markets appear to have considerable growth potential for Lau's products and this means of expansion will receive increased emphasis.

Lau also moved ahead with new products during the year, introducing a complete line of portable electronic air cleaners and console style combination electronic air

cleaner/humidifiers. Moreover, the market for air moving products sold to manufacturers of forced warm air heating, ventilating and air conditioning equipment continues to grow. The Division is concentrating its major attention on this market.

During the past year, Lau was affected by increased material costs and the limited availability of steel and plastics. The Division has instituted a vigorous program of purchasing and inventory controls to reduce material costs. In addition, a campaign to reduce operating costs has been launched in all plants.

Lau Division President, Peterson Nesbit, inspects some of the Division's basic line of components for heating, cooling and humidifying equipment.



Malta Division

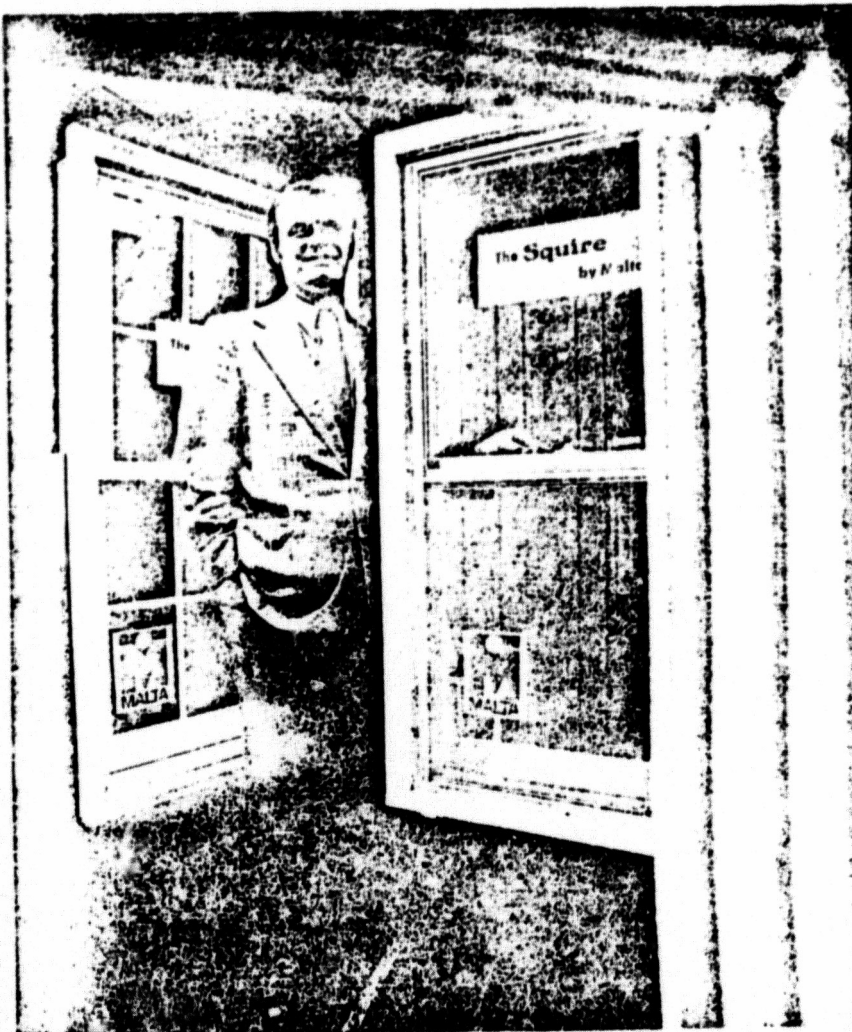
1974 Sales — \$17,193,000, up 2% over 1973
8% of total corporate sales

The Malta Division last year completed the restructuring and strengthening of its organization and, despite substantial increases in lumber, aluminum and glass costs, has shown improvement in recent months. The Division manufactures wood windows and patio doors in its Ohio plant, insulated glass in the Twin Pane location in Detroit and lumber cut-stock in its Imperial Wood facilities in Spokane, Washington.

Malta is concentrating on continuing improvement in the operating efficiency of the window plant and on imple-

menting cost controls in all areas. In its marketing programs, the Division is looking for increased window sales to the manufactured housing industry. Twin Pane is aiming its sales efforts at the market for higher quality, special glass required for commercial projects and is testing production of reflective glass and burglar-proof glass. Imperial Wood, in addition to supplying wood requirements for Malta windows and the MH/RV Division's doors, is finding other market for cutstock product, including door stiles and cross rails.

Malta Division's President, Herbert Gerhard, displays the two newest designs in Malta wood windows.



Philips Interiors Division

1974 Sales— 114,000, up 17% over 1973
2% of total corporate sales

The Philips Interiors Division is just beginning to take shape following the acquisition of TaylorMade Corp. and Cherokee Batting Company, Inc. last year. It now manufactures upholstered furniture, bedding and batting for both residential markets and the mobile home industry in plants in Bonham, Texas, Cheraw, South Carolina and Thomasville, Georgia. It also distributes a line of case goods for mobile homes. At the present time, the Division is

marketing its products only in the southeastern and south central states.

Philips Interiors is concentrating on better quality furniture, finding a market in dealers in the higher-priced, double-wide mobile homes. It is developing a limited number of finer furniture styles and is planning to make its operations more self-sufficient for future growth.

Grady Davis, President of the new Philips Interiors Division, is introducing a complete line of higher quality furniture for the mobile home industry.



Manufactured Housing/Recreational Vehicle Components Division

1974 Sales \$112,754,000, down 18% from 1973 sales
56% of total corporate sales.

This Division, the company's largest, experienced seriously reduced sales and earnings during the past year. Many factors combined to produce these results. Most critical was the sharp drop in recreational vehicle and mobile home production. Next in seriousness were the substantially increased interest costs resulting mainly from the Division's inventories and the investment in the new Nicholasville facility. Third, the Division absorbed large start-up costs at Nicholasville and substantial costs in the shut-down of

the Mobil Temp plant whose operations were transferred to Nicholasville. Finally, increases in material costs were not recovered through higher selling prices early enough to affect 1974 results materially.

MH/RV Division President Robert Brethen with the Jetglas Water Heater and the Ventline free-standing fireplace that represent his Division's new market potential through diversification.



In the face of this combination of negative influences, the Division acted and is continuing to act aggressively to return to its historical growth pattern. The sales organization has been restructured to reduce costs and is directed at developing new business through deeper penetration of existing accounts.

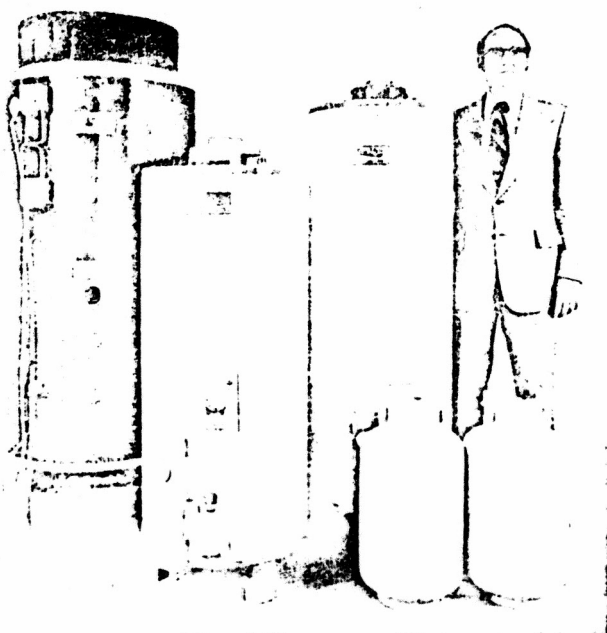
A concerted effort was initiated in all plants to manage Division operations for maximum profitability in the light of reduced volume. As a result of this continuing effort, controllable costs are now at the lowest level ever reached and the Division's manufacturing management team is stronger and more effective. Inventory reduction programs with established month-end targets have been adopted. Finally, a series of price increases have been installed to pass on as much of the higher costs as possible in the competitive market.

The Division anticipates that the mobile home industry gradually will regain strength in fiscal 1975 and is well-positioned to recover its lost sales volume. In addition, the Division has begun to utilize its technical expertise and manufacturing capabilities to enter markets outside of the mobile home and recreational vehicle industries. The most important of these moves, of course, came with the acquisition of the domestic and commercial water heater business of the Carrier Corporation and the start-up of production of our line of Jetglas water heaters at Nicholasville.

In addition, our operating groups are developing new volume outside of their traditional markets. One of the most potentially significant of these developments is the free-standing wood-burning fireplace being developed by our Ventline Group for the home and apartment market.

Just after the close of the year, some organizational changes were made to provide improved control and coordination in major MH/RV Division operations. In the Appliance Group, the importance of the rapid development of profitable operations at Nicholasville prompted a strengthening of corporate management direction. Under this emphasis, the new facility, which is approaching full production capacity, will aim at providing quality, prompt service and efficient administration for our rapidly growing water heater business. In addition to Nicholasville, the Appliance Group was responsible for production of our Speed-O-Matic line of mobile home water heaters, our Mobil Temp line of recreational vehicle water heaters and our complete line of cylinders for liquid propane gas storage.

David Palmisano, Division Vice President, Manufacturing Services, displays the wide range of products produced by the Appliance Group.



Axle/Roof Group Manager, Richard Dexter inspects the newly developed 3" electric brake for utility trailers that is expanding a new market for the MH/RV Division.



MH/RV Division

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Our Axle/Roof Group, during the past year, produced mobile home and recreational vehicle running gear assemblies in three locations and galvanized steel roofs for the same market in five plants. Especially significant, in view of the curtailment of production of mobile homes and recreational vehicles, was the Group's development of a new 3" electric brake for heavy-duty, over-the-road utility trailers. This market, with its increasing potential, offers the Axle/Roof Group opportunities for new sales volume through diversification. The Axle/Roof Group also is developing a new coupler/jack assembly for our MH/RV market.

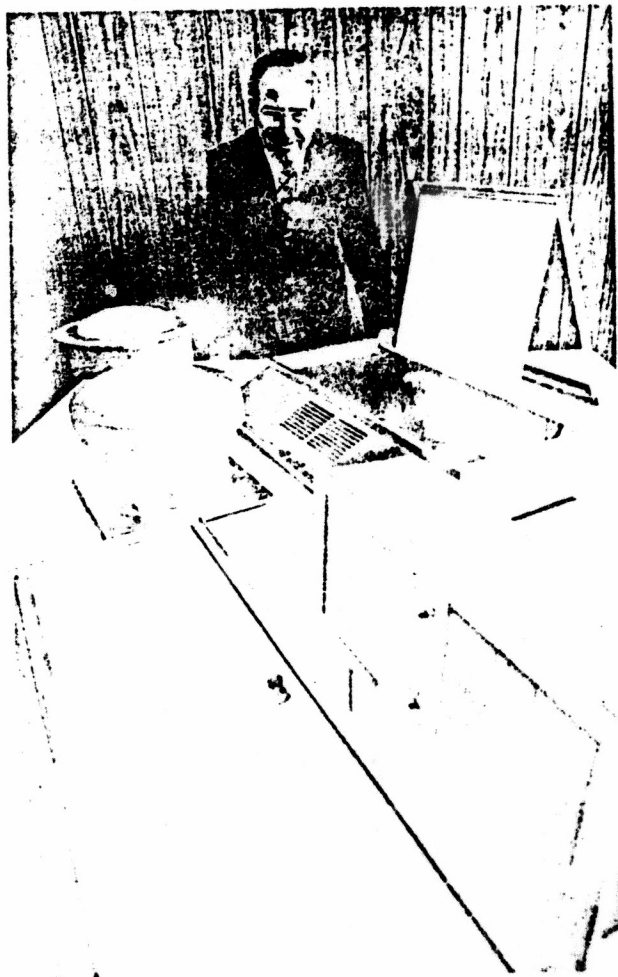
Following the retirement at year's end of Vernon Sailor, President of Versail Manufacturing, Inc., and Door Group Manager, we combined the operations of the Door and Window Groups in order to strengthen and improve the efficiency of the manufacture and marketing of both product lines. The new combined Group operates nine plants. Together with our West Coast Operations, they provide full-line door and window service to mobile home and recreational vehicle manufacturers in every geographical market concentration. At this time, the Group is introducing new door and window products designed to penetrate the high-growth sectional and double-wide home market.

The new Manager of the recently combined Door and Window Group, Jack Barben, displays the Division's latest door and window designs for the growing double-wide and sectional housing market.



The Ventline Group, managing two manufacturing centers for the production of ventilating equipment and range hoods for the MH/RV industries, also developed a series of new products to increase its market penetration. Included were a combination ceiling exhaust ventilator and light and two new range hood designs. Since Ventline was affected most by the decline in recreational vehicle production, strenuous efforts have been made to diversify their markets by developing a free-standing, wood-burning fireplace with a planned introduction during fiscal 1975.

Harry Hunt, Ventline Group Manager, shows the array of new products introduced by his Group last year for the MH/RV market. Ventline is also studying diversification into new markets through new products.



Service... a responsibility and an opportunity

From its beginning, our company has accepted the responsibility for serving our customers by anticipating their needs and organizing and operating to meet them. By living up to this responsibility, we have earned the opportunity to grow as our market grew.

Today, more than ever, the opportunity for future growth depends on sustaining a high level of performance of our service responsibility. That is why, within each Division, we are concentrating on gearing our manufacturing and distribution to the defined needs of each market. Accepting the fact that we are in business in a tough economy, facing tough competition, we are emphasizing our ability to deliver to every customer the products he needs, made the way he wants them, when and where he wants them. We back up this emphasis by the location of our manufacturing facilities conveniently close to customer concentration and by maintaining delivery fleets equipped and routed to fit our customers' own schedules.

And we emphasize that, throughout the Philips organization, service is the responsibility of all the men and women who make up our organization. It is their efficient, painstaking work which produces dependable quality products at fair prices. It is their recognition of our customers' needs that has been the foundation for our growth. It remains the opportunity for our future.

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● Directory of Manufacturing Facilities

Alabama

Hartselle ... windows, doors

California

Anaheim ... Lasco fiberglass showers & tubs

Curamonga ... windows, doors

Irwindale ... Lau heating, cooling & humidifying equipment

Montebello ... Lasco plastic pipe & fittings

Georgia

Americus ... windows

Americus ... range hoods & venting equipment

Cordele ... Lasco fiberglass showers & tubs

Monticello ... axle assemblies, roofs

Thomasville ... interior furnishings

Indiana

Albion ... axle components

Bristol ... range hoods & venting equipment

Elkhart ... windows

Elkhart ... axle assemblies

Elkhart ... mobile home and recreational vehicle doors

Indianapolis ... Lau heating, cooling & humidifying equipment

Lebanon ... Lau heating, cooling & humidifying equipment, axle components

Michigan City ... roofs

Kansas

Halstead ... roofs, axle assemblies

Newton ... windows



Kentucky
 Florence ... fiberglass building panels
 Nicholasville ... domestic, commercial, mobile home and recreational vehicle water heaters

Michigan
 Livonia ... floor-mounted water heaters
 Warren ... floor-mounted water heaters & tubs

Minnesota
 Minneapolis ... fan heating, cooling & humidifying equipment
 Dayton ... fan heating, cooling & humidifying equipment
 St. Paul ... Malta wood windows, patio doors

Oklahoma
 El Reno ... fan heating, cooling & humidifying equipment components

Oregon
 Dayton ... windows, doors

Pennsylvania
 Leola ... roofs, axle assemblies
 Selinsgrove ... windows

South Carolina
 Cheraw ... interior furnishings
 Chester ... windows, doors

Tennessee
 Crossville ... mobile home water heaters, cylinders

Texas
 Arlington ... axle assemblies, roofs, coupler/packs
 Bonham ... interior furnishings
 Clarksville ... windows, doors

Washington
 Spokane ... Imperial wood products

Wisconsin
 Milwaukee ... Lau Bayley Blower

Canada
 Kitchener, Ontario ... Philips/Lau Limited

Belgium
 Marche-en-Famenne ... Lau International S.A.

■ Distribution Centers

Florida

Ocala ... windows, doors, mobile home water heaters, coupler/packs, cylinders, vents-hoods
 Orlando ... plastic pipe fittings

Idaho

Boise ... windows, doors, axles, vents-hoods

Illinois

Maywood ... insulating glass

Indiana

Elkhart ... mobile home water heaters, coupler/packs, cylinders

Texas

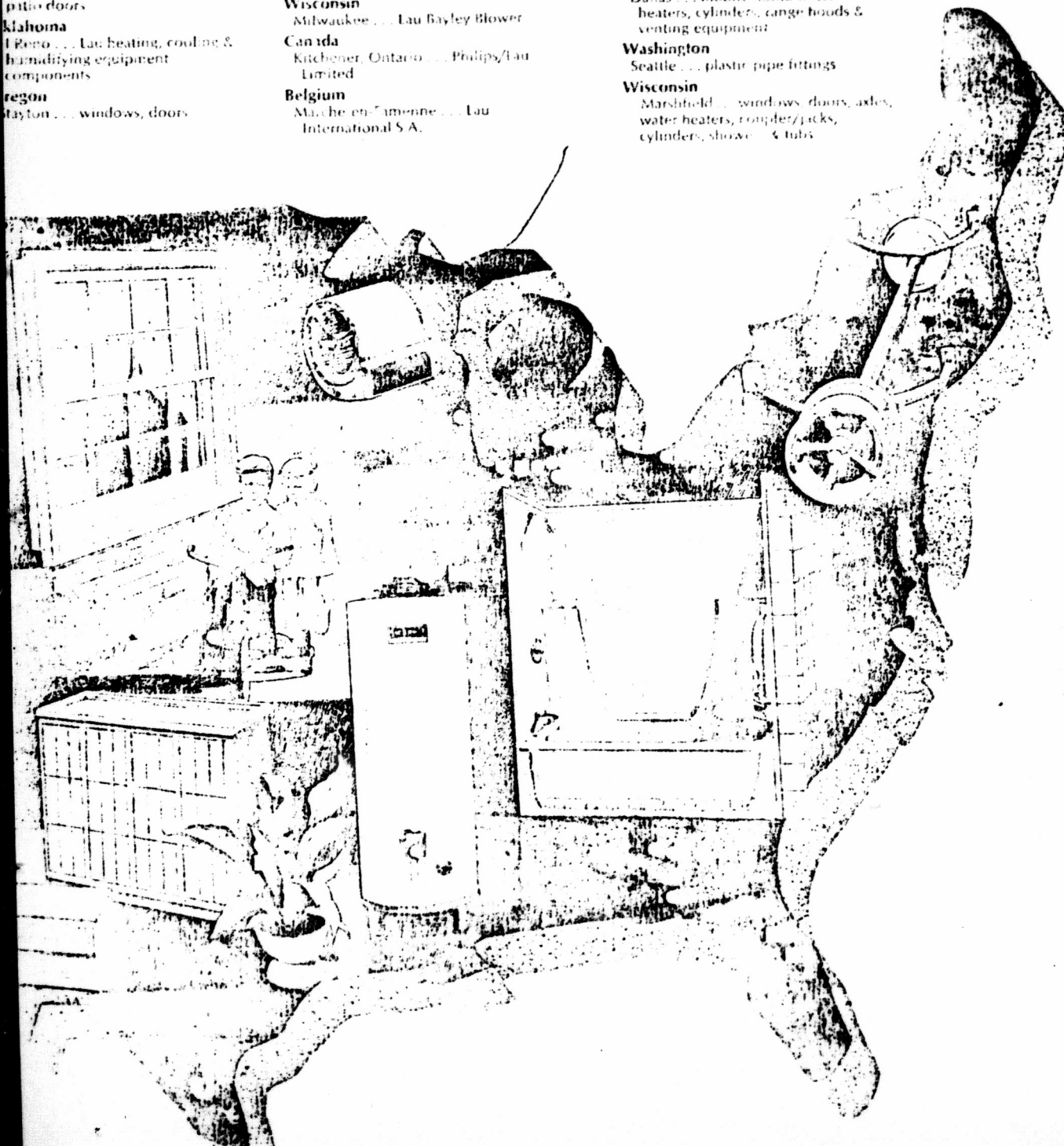
Dallas ... plastic pipe fittings
 Dallas ... mobile home water heaters, cylinders, range hoods & venting equipment

Washington

Seattle ... plastic pipe fittings

Wisconsin

Marshfield ... windows, doors, axles, water heaters, coupler/packs, cylinders, showers & tubs



Consolidated Balance Sheet

Philips Industries Inc. and Subsidiaries
March 31, 1974 and 1973

ASSETS

Current Assets

	1974	1973
Cash (Note 3)	\$ 5,158,794	\$ 2,549,643
Accounts receivable:		
Trade, less allowance for doubtful accounts—		
\$773,131 in 1974; \$868,199 in 1973	21,717,963	23,287,093
Refund of income taxes	1,700,000	
Other	458,441	376,336
Inventories (Note 4)	44,659,329	34,956,587
Prepaid expenses	672,468	798,266
Current assets	<u>74,366,995</u>	<u>61,967,925</u>

Property and Equipment

Land	2,265,749	2,258,509
Buildings	27,162,713	22,636,176
Machinery and equipment	34,013,647	27,114,349
Transportation equipment	7,057,122	6,281,762
Total	<u>70,499,231</u>	<u>58,290,796</u>
Accumulated depreciation	<u>24,992,089</u>	<u>20,729,710</u>
Property and equipment	<u>45,507,142</u>	<u>37,561,086</u>

Other Assets

Intangible assets, less amortization	983,098	1,118,112
Federal income taxes, future benefits (Note 5)	1,505,612	1,652,550
Deferred expenses, deposits and other	1,766,606	1,646,347
Other assets	<u>4,255,316</u>	<u>4,417,009</u>
Total	<u>\$124,129,453</u>	<u>\$103,946,020</u>

See notes to financial statements.

LIABILITIES AND EQUITY

Current Liabilities

	1974	1973
Notes payable, banks (Note 3)	\$ 19,700,937	\$ 10,100,000
Current portion of long term liabilities	778,205	829,772
Accounts payable		
Trade	12,948,180	11,978,758
Other	193,119	272,770
Accrued liabilities		
Federal and state income taxes	920,711	2,995,669
Other	6,492,783	6,547,039
Current liabilities	<u>41,033,935</u>	<u>32,724,008</u>

Long-Term Liabilities (Note 6)

35,228,024	23,558,857
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Other Liabilities

Minority interest in subsidiary		156,528
Deferred federal income taxes (Note 5)	1,757,877	1,254,266
Other liabilities	1,757,877	1,410,794
Liabilities	<u>78,019,836</u>	<u>57,693,659</u>

Shareholders' Equity (Notes 7 and 8)

Preferred stocks		
\$3.00 series; outstanding, 53,665 shares	293,325	293,325
Special, \$1.00 issue; outstanding, 736,808 shares		
in 1974 and 736,473 in 1973	3,684,040	3,682,365
Common stock, stated value \$1.00 a share	4,824,332	4,973,966
Other contributed capital	1,461,131	2,411,085
Retained income (Note 6)	35,846,769	34,891,620
Shareholders' equity	<u>46,109,617</u>	<u>46,252,361</u>
Total	<u>\$124,129,453</u>	<u>\$103,946,020</u>

See notes to financial statements.

Statements of Consolidated Income and Retained Income

Philips Industries, Inc. and Subsidiaries
Years Ended March 31, 1974 and 1973

CONSOLIDATED INCOME

	1974	1973
Net Sales	<u>\$202,580,043</u>	<u>\$216,031,455</u>
Cost of products sold	161,998,118	172,090,325
Selling, general and administrative expenses	31,959,580	28,890,956
Total	<u>193,957,698</u>	<u>200,981,281</u>
Income from operations	8,622,345	15,050,174
Other--net (principally interest expense)	3,435,975	2,283,201
Income before income taxes	5,186,370	12,766,973
Provision for income taxes (Note 5)	<u>2,435,041</u>	<u>6,131,798</u>
Net Income for the Year	<u>\$ 2,751,329</u>	<u>\$ 6,635,175</u>
Earnings Per Share (Note 9)		
Earnings per common and common equivalent share	\$.38	\$1.10
Earnings per common share, assuming full dilution	\$.38	\$1.10

CONSOLIDATED RETAINED INCOME

Beginning of Year		
As previously reported	\$34,667,190	\$29,990,182
Restatement for pooling of interests (Note 2)	224,430	99,195
As restated	34,891,620	30,089,377
Net income for the year	2,751,329	6,635,175
Retained income of pooled companies not included in restated amounts (Note 2)	76,078	
Total	<u>37,719,027</u>	<u>36,724,552</u>
Cash dividends		
Preferred stock, \$3.00 series	175,995	176,055
Special preferred stock, \$1.00 issue	736,696	735,967
Common stock, per share--\$.20 in 1974 and \$.19 in 1973	959,547	920,910
Total	<u>1,872,238</u>	<u>1,832,932</u>
End of Year	<u>\$35,846,789</u>	<u>\$34,891,620</u>

See notes to financial statements.

Statement of Changes in Consolidated Financial Position

Philips Industries Inc. and Subsidiaries
Years Ended March 31, 1974 and 1973

Sources of Working Capital

	1974	1973
Net income for the year	\$ 2,751,329	\$ 6,635,175
Charges to income not requiring use of working capital		
Provision for depreciation	5,544,880	4,915,455
Provision for amortization	89,405	97,863
Federal income taxes, future benefits and deferrals	650,549	424,561
Minority interest in income of subsidiary	17,041	23,726
Working Capital from Operations	9,053,204	12,096,585
Decrease in working capital		658,910
Proceeds from long-term borrowings	12,975,994	1,489,204
Stock options exercised and stock bonuses	126,787	486,698
Disposals of property and equipment, net book value	1,567,222	882,295
Total	<u>\$23,723,207</u>	<u>\$15,613,692</u>

Uses of Working Capital

Increase in working capital	\$ 4,083,143	
Property and equipment additions	15,058,158	\$11,964,022
Cash dividends on preferred and common stock	1,872,238	1,832,932
Payments on long-term liabilities and		
changes in current portion	1,306,827	831,467
Acquisition of minority interest	150,000	66,667
Purchase of treasury shares	1,234,700	
Other uses	12,141	918,604
Total	<u>\$23,723,207</u>	<u>\$15,613,692</u>

Increase (Decrease) in Working Capital

Cash	\$ 2,609,151	\$ (649,074)
Accounts receivable	212,975	(9,695)
Inventories	9,702,742	3,519,167
Prepaid expenses	(125,798)	171,374
Notes payable	(9,600,937)	(4,100,000)
Current portion of long-term liabilities	51,567	(38,012)
Accounts payable	(839,771)	867,025
Accrued liabilities	2,129,214	(419,695)
Total	<u>\$ 4,083,143</u>	<u>\$ (658,910)</u>

See notes to financial statements.

Notes to Financial Statements

1. Summary of Significant Accounting Policies

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of the Company and all subsidiaries, except as stated in Note 2. All significant intercompany accounts and transactions have been eliminated.

The accounts of foreign subsidiaries, which are not material in the aggregate, are translated into dollars at appropriate rates of exchange.

INVENTORIES

Inventories are valued at the lower of cost or market. Cost is determined principally by the first-in, first-out method using specific identification, average or standard costs.

PROPERTY AND DEPRECIATION

Property, plant and equipment are carried at cost. Expenditures which extend the lives of property and major improvements are capitalized. Gains and losses resulting from retirement or disposal of properties are reflected in income.

For financial accounting, straight-line depreciation has been used on property acquired since April 1, 1968 and, as to transportation equipment, since April 1, 1972. Previously, accelerated depreciation methods generally were used, as allowed for federal income tax purposes. Estimated service years are:

	Median	Range
Building and improvements	40	5 - 40
Machinery and equipment	8	3 - 12
Transportation equipment	4	3 - 6

INTANGIBLE ASSETS

Intangible assets, consisting principally of patents and trademarks acquired from others, are carried at cost and are amortized over their legal lives. Purchased goodwill is amortized over ten-year periods. Expenditures for patents, product development and start-up costs of new facilities are charged to expense as incurred.

INCOME TAXES

The Company intends to file a consolidated income tax return in 1974. In prior years, separate returns for each Company were filed and the tax benefits of operating loss carryovers of certain subsidiaries were recorded where realization was considered assured.

Deferred income taxes are provided for timing differences between financial and taxable income, resulting principally from the use of accelerated depreciation methods wherever possible for tax purposes. Investment tax credits generally are recorded in the year in which the related assets are acquired.

PENSION AND PROFIT SHARING PLANS

The Company has various pension and profit sharing plans for the benefit of eligible employees. Current service costs and the amortization of past service costs are accrued and funded annually. Past service costs are being amortized over 20 and 30 year periods. The profit sharing plans generally are funded by voluntary contributions to trusts, although a nominal amount has been accrued for certain unfunded profit sharing plans.

2. Acquisitions

During the fiscal year 1974, the Company acquired, in pooling of interests transactions, the Cherokee Batting Company, Inc. and the TaylorMade Corporation in exchange for 25,040 shares and 99,993 shares of common stock, respectively.

The financial statements for 1973 have been restated to include only the accounts of TaylorMade. The effect of the acquisitions on the accompanying financial statements is not material.

3. Cash and Short-term Notes Payable

The Company has agreements with various banks to provide short-term lines of credit up to \$22,650,000 at the prevailing prime interest rate. The agreements do not specifically require that minimum deposits be maintained; however, the Company informally maintained compensating collected bank balances averaging approximately \$2,600,000 during the year.

During 1974, the maximum short-term notes payable outstanding at any month end was \$19,650,000 and the average was \$14,169,000; interest ranged from 6% to 10%.

4. Inventories

The classification of inventories below is based on physical inventories taken principally at the end of February of each year:

	(In Thousands)	
	1974	1973
Raw materials	\$27,271	\$21,421
Work in process	8,001	4,229
Finished products	9,387	9,306
Total	<u>\$44,659</u>	<u>\$34,956</u>

5. Income Taxes

The provision for income taxes includes the following components:

	(In Thousands)	
	1974	1973
Current income taxes	\$1,784	\$5,707
Deferred income taxes	504	823
Future tax benefits	147	(398)
Total	<u>\$2,435</u>	<u>\$6,132</u>

Notes to Financial Statements

5. Income Taxes (Continued)

The reconciliation of theoretical tax expense at the statutory rate of 48% with the provision for income taxes is as follows:

	(In Thousands)	
	1974	1973
Theoretical tax expense	\$2,489	\$6,123
Increases (decreases):		
Investment tax credits	(329)	(327)
State income taxes,		
less federal tax benefits	201	287
Other, net	74	44
Provision for income taxes	<u>\$2,435</u>	<u>\$6,132</u>

At March 31, 1974 the Company had \$1,505,612 in future tax benefits available of which \$587,000 expires March 31, 1975 unless utilized; the remainder expires March 31, 1976 through 1978.

6. Long-term Liabilities

	(In Thousands)	
	1974	1973
10% Notes, due August 1, 1977, unsecured, redeemable at par on or after August 1, 1975	\$15,000	\$15,000
Capitalized lease obligations, payable in installments to 1993, interest from 4% to 8 1/4 % (Note 11)	13,936	6,281
Notes payable, unsecured, due 1993, interest at 8 1/4 %	5,000	
Sinking Fund Debentures, due in 1978, 1979 and 1982, interest at 6 1/2 %	756	932
Other loans, due from 1975 to 1981, interest from 4% to 9 3/4 %, principally unsecured	1,314	2,176
Total	<u>36,006</u>	<u>24,389</u>
Current portion	<u>778</u>	<u>830</u>
Long-term portion	<u>\$35,228</u>	<u>\$23,559</u>

Total interest expense was \$3,774,000 in 1974 and \$2,603,000 in 1973.

Long-term debt maturities and sinking fund requirements are: 1975, \$778,000; 1976, \$780,000; 1977, \$742,000; 1978, \$15,914,000; and 1979, \$752,000.

The loan agreements restrict retained income available for dividends to approximately \$3,800,000.

7. Capital Stock and Other Contributed Capital

Preferred stock issues are cumulative as to dividends and have liquidation preferences and stated values of \$5.00 a share. The authorized number of shares is 2,000,000 as to Preferred Stock and 792,227 as to Special Preferred Stock, including 102,892 and 55,196 shares, respectively, which are permanently retired.

Each \$3.00 series share is convertible into two common shares and may be called for redemption at \$75. Each \$1.00 special share is convertible into 1.23 common shares and may be called for redemption at \$37.50 after September 30, 1974.

The authorized number of common shares is 10,000,000 and the changes in outstanding shares during 1974 are:

	Shares
Outstanding, March 31, 1973	4,873,973
Poolings of interests (Note 2):	
TaylorMade Corporation	99,993
Total	<u>4,973,966</u>
Cherokee Batting Company, Inc.	25,040
Purchase of treasury shares	(203,700)
Executive Stock Bonus Plan	27,026
Other stock bonuses	<u>2,000</u>
Outstanding, March 31, 1974	<u>4,832,332</u>

At March 31, 1974 there were 176,674 common shares held in the treasury. In addition to shares reserved for the stock option plans, 22,974 common shares were reserved for issuance under the Executive Stock Bonus Plan and 1,023,603 shares were reserved for conversion of preferred stock.

Changes in other contributed capital are:

	1974	1973
Beginning of year	\$2,411,085	\$1,949,223
Common shares purchased (1,031,000)		
Conversion of preferred		40,836
Stock options exercised	117	310,366
Stock bonuses, 29,026 and 19,048 common shares ...	95,969	125,914
Transactions related to pooled companies	(15,040)	(15,254)
End of year	<u>\$1,461,131</u>	<u>\$2,411,085</u>

Notes to Financial Statements

8. Stock Option Plans

The 1964 Employee Stock Option Plan authorizes the granting of options to purchase 700,000 common shares at the fair market value on the date of grant. Certain information as to shares under option is as follows:

	1974	1973
At March 31:		
Outstanding	141,650	160,500
Option price:		
per share	\$6.07 to \$32.28	\$9.19 to \$32.28
Exercisable	50,600	55,750
For the fiscal year:		
Exercised		26,000
Granted	70,900	66,450
Cancelled	49,750	25,800

There are 700,000 unissued common shares reserved for issuance under the 1974 Stock Option and Sustained Performance Share Plan approved by the Board of Directors on March 28, 1974, subject to ratification by the Shareholders at the next annual meeting. Under the plan, non-qualified stock options may be granted in exchange for options granted under the 1964 Plan.

Options to purchase Special Preferred Stock at \$5.35 a share were exercised for 335 shares in 1974 and 674 shares in 1973; no options are now outstanding.

9. Earnings Per Share

Earnings per common and common equivalent share are based on the following:

	(In Thousands)	
	1974	1973
Earnings available to common:		
Net income	\$2,751	\$6,635
Preferred dividends:		
\$3.00 series	(176)	(176)
\$1.00 issue	(736)	
Total	<u>\$1,839</u>	<u>\$6,459</u>
Average shares outstanding:		
Common	4,846	4,949
Dilutive common stock equivalents (a) (c)		917
Basis for primary earnings per share	4,846	5,866
Other dilutive stock options (b) (c)		5
Basis for fully diluted earnings per share	<u>4,846</u>	<u>5,871</u>

(a) The Special Preferred Stock, \$1.00 Issue, and certain stock options are considered common stock equivalents. When the effect is dilutive, common stock equivalents are included as shares outstanding in the computation of primary earnings per share.

(b) The Preferred Stock, \$3.00 Series and stock options issued through May 31, 1959, are not considered to be common stock equivalents and enter into the computation of fully diluted earnings per share only when the effect is dilutive.

(c) The number of common shares included for dilutive stock options is reduced by shares assumed to have been purchased with the proceeds from the exercise of options.

10. Pension and Profit Sharing

The unfunded past service cost of the pension plans at March 31, 1974 was approximately \$970,000. Total expense for all plans amounted to:

	(In Thousands)	
	1974	1973
Profit sharing	\$302	\$339
Pension plans	180	122

11. Leases and Other Commitments

A financing lease is a lease which, during the non-cancellable period, either covers 75% or more of the economic life of the property or has terms which assure the lessor a full recovery of his investment at the inception of the lease plus a reasonable return on the use of the asset. All material financing leases have been capitalized and are included in long-term liabilities. Total lease and rental charges are approximately as follows:

	(In Thousands)	
	1974	1973
Lease payments on capitalized leases	\$ 302	\$ 287
Net rental expense, noncapitalized leases and other:		
Real estate	491	432
Equipment and other	873	844
Total	<u>\$1,667</u>	<u>\$1,563</u>

Lease commitments, excluding capitalized leases, for plant facilities and equipment are approximately \$376,000 in 1975, decreasing to \$53,000 by 1979.

The Company has commitments of approximately \$3,500,000 to acquire or complete construction of new facilities and equipment.

Accountants' Opinion

HASKINS & SELLS
Certified Public Accountants
Dayton, Ohio

To the Directors and Shareholders
of Philips Industries Inc.

We have examined the consolidated balance sheet of Philips Industries Inc. and subsidiaries as of March 31, 1974 and 1973 and the related statements of consolidated income, retained income and of changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying financial statements present fairly the financial position of the companies at March 31, 1974 and 1973 and the results of their operations and changes in their financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Haskins & Sells

May 16, 1974

Ten Year Highlights

Financial and Statistical Summary
Years Ended March 31 (a)

For the Year (Dollars in Thousands)

	1974	1973	1972
Net sales	\$202,580	\$216,031	\$186,701
Income before income taxes	5,186	12,767	12,564
Net income	2,751	6,635	6,477
Earnings available to common stock	1,839	6,459	6,299
Depreciation	5,545	4,915	4,104
Capital expenditures	15,058	11,964	7,625
Return on shareholders' equity	6.0%	14.3%	15.9%

At Year End (In Thousands)

Working capital	\$ 33,333	\$29,244	\$ 29,749
Property and equipment	45,507	37,561	31,112
Total assets	124,129	103,916	92,933
Long-term liabilities	35,228	23,559	22,641
Shareholders' equity	46,110	46,252	40,779

Other Statistics

Number of employees	5,271	6,203	6,018
Number of manufacturing plants	42	40	40
Manufacturing space—Thousands of square feet	4,215	3,620	3,405
Number of common shareholders	8,669	8,096	6,983
Common shares outstanding (In Thousands):			
Weighted average, including common equivalent shares	4,846	5,866	5,734
At year end	4,824	4,974	4,814

Per Share

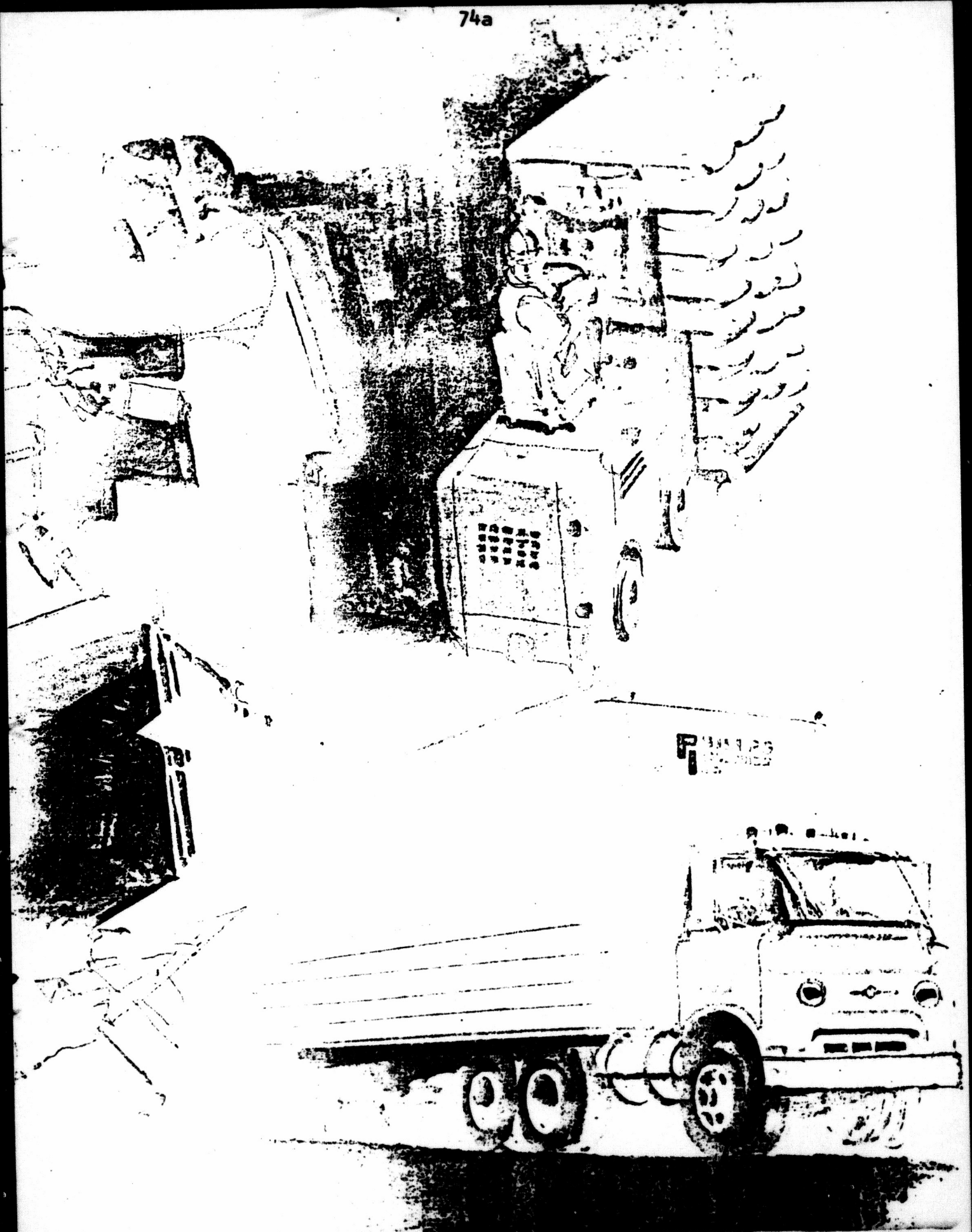
Earnings per common and common equivalent share	\$.38	\$1.10	\$1.10
Earnings per common share, assuming full dilution33	1.10	1.09
Cash dividends on common20	.19	.16
Shareholders' equity (c)	7.88	7.71	6.97

(a) Data for companies acquired in poolings of interests are generally included for the year in which the poolings occurred and the preceding year.

(b) Comparable information not available.

(c) Based on shares outstanding at year-end including preferred shares as if converted to common.

1971	1970	1969	1968	1967	1966	1965
1,857	\$137,246	\$123,894	\$58,396	\$39,828	\$34,989	\$16,573
7,866	9,906	12,516	5,427	1,838	2,756	1,088
3,973	4,642	5,995	2,815	1,006	1,690	569
3,048	4,463	5,817	2,637	884	1,377	569
3,649	3,467	2,554	1,308	1,073	759	393
6,728	11,228	8,215	3,620	2,179	1,473	1,028
11.2%	14.1%	20.2%	29.8%	18.7%	50.3%	32.4%
6,926	\$ 10,420	\$ 14,330	\$ 5,390	\$ 3,061	\$ 2,052	\$ 1,269
8,522	26,226	18,947	7,873	4,581	3,534	1,795
6,082	69,096	59,442	24,149	13,738	12,117	5,536
3,409	6,316	5,790	4,816	2,668	2,456	1,428
5,527	32,897	29,666	9,450	5,384	3,357	1,760
4,757	4,445	4,226	2,370	1,477	1,468	818
37	36	33	22	13	10	7
3,237	3,180	2,663	1,211	626	469	292
7,155	4,611	2,070	1,514	1,628	961	550
4,76	5,554	5,414	3,965	3,346	2,894	2,567
4,757	4,672	4,546	3,571	3,421	2,961	2,601
\$.65	\$.80	\$1.07	\$.66	\$.26	\$.48	\$.22
.64	.78	1.03	(b)	(b)	(b)	(b)
.16	.15	.12	.10	.08	.06	.05
6.13	5.76	5.26	2.31	1.41	1.13	.68



75a

**PHILIPS
INDUSTRIES
INC.**

4801 Springfield Street
Dayton, Ohio 45407

AFFIDAVIT OF H. H. CROGHAN (SUPPLEMENTAL) RE STATEMENT 76a
OF 5-15-75 (Filed July 9, 1976)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x
FRAMEN STEEL SUPPLY COMPANY, INC., :
Plaintiff, :
-against- : 75 Civ. 1643 (WK)
PHILIPS INDUSTRIES, INC., :
Defendant. :
----- x

HAROLD H. CROGHAN, being duly sworn, deposes and
says:

1. I am Secretary, Treasurer and General
Counsel of Philips Industries, Inc. ("Philips"), a
corporation organized under the laws of the State of Ohio
and having its principal place of business in Dayton, Ohio.
I am familiar with the scope and nature of Philips'
business and certain matters referred to in the complaint
of Framen Steel Supply Company, Inc.

2. On May 15, 1975, I submitted an affidavit
to this Court in support of Philips' motion to dismiss
this action for lack of personal jurisdiction. Paragraph
7 of my affidavit included the statement: "No officer,
director or employee of Philips resides within the State
of New York and Philips' shareholders' and directors'
meetings are held in Dayton, Ohio."

3. Information has recently come to attention
which leads me to believe that this statement was correct
in one respect. I submit this supplemental affidavit in
order to state the facts as I now understand them.

77a

Such corrected facts as I knew them then were submitted to Plaintiff's counsel at the deposition of Donald Hinman, a vice president of a Philips division.

4. Of Philips' approximately 3,000 employees (in the U.S.A., Belgium and Canada), three employees maintain personal residences in New York. One of these employees has resided in New York since April, 1975, one has resided in New York since June, 1970, and the third has resided in New York since his employment by Philips in February, 1960.

5. These employees with current residences in New York are sales personnel whose area of responsibility includes territory outside of New York.

6. To the best of my knowledge, none of the other statements contained in my affidavit of May 15, 1975 were or are in any respect incorrect.

Harold H. Croghan

Sworn to before me this
30th day of January, 1976.

Notary Public

AFFIDAVIT OF PAUL CLINE (Filed July 9, 1976)

78a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
FRAMEN STEEL SUPPLY COMPANY, INC., :
Plaintiff, : 75 Civ. 1643 (WK)
-against- :
PHILIPS INDUSTRIES INC., :
Defendant. :

- - - - - x
STATE OF OHIO)
COUNTY OF MONTGOMERY ; ss.:
PAUL CLINE, being duly sworn, deposes and says:

1. I am Director of Employee Relations of Philips Industries Inc. ("Philips"), a corporation organized under the laws of the State of Ohio and having its principal place of business in Dayton, Ohio. I am familiar with the scope and nature of Philips' business.

2. Of Philips' approximately 3,000 employees, my research reveals three employees maintain personal residences in New York. One of these employees has resided in New York since April, 1975, one has resided in New York since June, 1970, and the third has resided in New York since his employment by Philips in February, 1960.

3. These employees with current residences in New York are sales personnel whose area of responsibility includes territory outside of New York.

Paul Cline

Sworn to before me this
day of , 1976

Notary Public

DEPOSITION OF DONALD D. HINMAN, JR., VICE-PRESIDENT OF 79a
MARKETING OF LAW DIVISION OF PHILIPS INDUSTRIES
DATED DECEMBER 9, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

FRAMEN STEEL SUPPLY COMPANY, INC., :

Plaintiffs, :

-against- :

PHILIPS INDUSTRIES, INC.. :

Defendant. :

- - - - -X

48 Wall Street
New York, New York
December 9, 1975
10:00 A.M.

EXAMINATION BEFORE TRIAL of DONALD D. HINMAN, JR.,

taken pursuant to notice, held at the offices of
Sullivan & Cromwell, Esqs., at the above time and
place, before a Notary Public of the State of
New York.

ACME REPORTING SERVICE
SHORTHAND AND STENOGRAPHIC REPORTERS
NOTARIES PUBLIC
140 NASSAU STREET
NEW YORK CITY
TELEPHONES: BEEKMAN 3-0664-0665-0666

A p p e a r a n c e s :

BASS, ULLMAN & LUSTIGMAN, ESQS..
Attorneys for Plaintiff,
747 Third Avenue,
New York, New York.
BY: SHELDON LUSTIGMAN, ESQ.

SULLIVAN & CROMWELL, ESQS..
Attorneys for Defendant,
48 Wall Street,
New York, New York,
BY: DAVID OLASOV, ESQ., and
DAVID TULCHIN, ESQ..
of Counsel.

- - -

IT IS STIPULATED AND AGREED by and between
counsel for the respective parties hereto that
the sealing, certification and filing of the
within examination be, and the same hereby are
waived;

IT IS FURTHER STIPULATED AND AGREED that
the within examination may be signed and sworn
to before any notary public or an officer author-
ized to administer oaths with the same force
and effect as if signed and sworn to before a
Clerk of this Court;

IT IS FURTHER STIPULATED AND AGREED that
all objections except as to the form of the
question be, and the same hereby are, reserved
to the time of the trial;

1
2 IT IS FURTHER STIPULATED AND AGREED that
3 a copy of this deposition shall be furnished
4 to the attorneys for the defendant by the
5 attorneys for the plaintiff without charge.

6
7 DONALD D. HINMAN, JR., called as a
8 witness, being first duly sworn by a Notary Public
9 of the State of New York, was examined and testi-
10 fied as follows:

11 EXAMINATION BY

12 MR. LUSTIGMAN:

13 Q State your name and address.

14 A Donald D. Hinman, Jr.; home address or business?

15 Q Business.

16 A 2027 Rome Avenue, Dayton, Ohio.

17 MR. OLASOV: Before you proceed, there is
18 one statement that was made in the affidavit of
19 Mr. Crogan that we have reason to believe, and
20 ought to be corrected in one minor respect. I
21 want to do that on the record before you proceed.

22 MR. LUSTIGMAN: Okay.

23 MR. OLASOV: In his affidavit, Mr. Crogan
24 states, among other things, that ~~a~~^{no} new director,
25 officer or employee maintained residence in

1 New York. That is correct, as far as the direc-
2 tors and officers are concerned, but we have since
3 learned that of the thirty-five hundred to eight
4 thousand employees, there have been, from time to
5 time, of Philips Industries, there is at least one
6 employee who is a sales person who maintains his
7 private residence in Syracuse, New York, and his
8 name is John Schuster. I am told that he moved
9 to New York the third week of April, 1975. We
10 understand there may be also for Malta, another
11 division of Philips Industries, another sales em-
12 ployee with territories covering in a number of
13 states who maintain a residence in New York, and
14 he a ently lives in Utica, New York, and his
15 name is James Doolittle. Actually, he lives near
16 Utica. He lives in Barnesville, New York.

17 MR. LUSTIGMAN: What division was Mr.
18 Schuster in?

19 MR. OLASOV: Lau. I don't have the dates
20 on which Doolittle may have been there, and I
21 point out that these are sales covering authority,
22 not only in New York, but in the case of Schuster,
23 apparently in six or seven other states. For what
24 it is worth, I wanted you to be aware of that.

25 MR. LUSTIGMAN: That would be paragraph

1 SEVENTH of the affidavit?

2 MR. OLASOV: Yes, in that one.

3 BY MR. LUSTIGMAN:

4 Q Mr. Hirman, what was your position with
5 Philips?

6 A I am vice president of marketing for the Lau Divi-
7 sion.

8 Q What type of products are manufactured and
9 sold by the Lau Division?

10 A Principally, we make fans and blowers and components
11 thereof and a line of power humidifiers, residential type
12 humidifiers.

13 Q I take it that the Lau Division, as well as the
14 other divisions is a wholly owned subsidiary of Philips
15 Industries?

16 A They are an operating division as opposed to a sub-
17 sidiary. That is the way I understand it.

18 Q Could you, basically, tell us what the differ-
19 entiations are and what comprises Philips Industries?

20 A You mean --

21 MR. OLASOV: You might give him the names.

22 Q What is Philips --

23 MR. OLASOV: And what they do.

24 MR. LUSTIGMAN: Yes.

25 A Principally Philips Industries is broken down in to

1 four operating divisions. The largest of which in
2 mobile home recreational vehicle division, and the next
3 largest is the Lau Division. There are two other divi-
4 sions called Malta and Glasgow, M-a-l-t-a and G-l-a-s-c-o-w.
5 And those are the names you want me to go into as to what
6 they do?

7 Q Yes.

8 A Mobile home recreational division is principally
9 the supplier of components to the original equipment manu-
10 facturers of mobile homes, windows, doors, axles, roofs,
11 various other things that go into building a mobile home.
12 They do not build a total home, but supply the manufactu-
13 rers the components.

14 Malta makes a line of, principally, wooden
15 windows and doors that relate to the residential home
16 construction market.

17 Glasgow is a company that makes plastic mate-
18 rials; principally, they make plastic fittings for pres-
19 sure type fittings, pipings. They also make residen-
20 tial products like shower and tub enclosures that are
21 molded in a one-piece type of thing. Those are the
22 principal things they make and the Lau Division, which
23 is the one I am associated with, the biggest part of it
24 is again selling to original equipment manufacturers the
25 type of people that make heating and ventilating air con-

85a

1 dittoning equipment and we sell them the components, the
2 fan and blower that goes in their unit. We also sell to
3 the after market and service parts for that same field.
4 We also make a line of industrial ventilation fans that
5 are sold primarily to commercial avocations and the resi-
6 dential humidifier product line which is sold under our
7 name and through Sears.

8 Q How long have you been connected with the
9 Phillips Industries.

10 A About three and a half years.

11 Q How long have you been vice president of
12 marketing?

13 A Since December of 1974.

14 Q Did you replace Charles Brown?

15 A Yes.

16 Q Is Mr. Brown still with the company?

17 A Yes, he is.

18 Q Before coming to testify today, were you given
19 any instructions as to what the deposition was about?

20 A We discussed, yesterday afternoon, in general what
21 I would be asked to describe.

22 Q Those discussions you had with counsel?

23 A Yes.

24 Q Except for those discussions you had with
25 your counsel, did you discuss your coming here with anyone

else in the company? 86a

1
2 With Harold Crobin, who is our corporate secretary
3 and treasurer and general counsel.

4 Q Were you asked to check any records to look for
5 any particular type of data?

6 A Only that I was told that I would probably be asked
7 questions like to what extent do we do business in the
8 State of New York and be prepared to answer such questions.

9 Q And in preparation for answering such questions,
10 did you consult any corporate records?

11 A To some extent, yes.

12 Q What corporate records did you consult?

13 A I consulted not corporate records, but our divisional
14 sales statistics that are computerized printouts, that
15 sort of thing, sales statistics.

16 Q These are computer printouts of the sales of
17 Lau Division?

18 A These are Lau Division sales only, yes, and only the
19 ones I looked at were asked if someone else would look at
20 it for me, relative to the OEM, the sales to original
21 equipment manufacturers.

22 Q So, actually, am I correct, you did not look
23 at any figures of sales for replacement parts?

24 MR. OLASOV: That's what he said. He said
25 he didn't consult records.

THE WITNESS. Those are the ones we had the

records for. I did ask questions of sales managers of those other groups as to approximately what were the sales and through what channels in those other markets.

Q For what period of time did you make this inquiry?

A Primarily, the first six months of our fiscal year which is the most recent data we have and that was beginning April 1, 1975. So that would be April to September.

Q Did you make any effort to check any figures for the years 1973 or the years 1974?

A Very -- 1973, no. I can't give you figures for 1974 off the top of my head.

Q Are there records at your company which would indicate the sales figures of all products sold for the year 1974?

A The sales figures of all products sold anywhere to anyone, is that what you are asking?

Q Correct.

A Sure, there is total sales statistics of the, you know, the sales results of the fiscal year.

Q Are those sales records in any way broken down by any geographical basis?

A Some of them are more difficult to obtain than others.

1 in the OEM area, they are rough figures and
2 are available by salesman by account. If you follow me,
3 in other words, every salesman has a list of accounts,
4 and those accounts we know how many dollars are sold to
5 each account.

6 Q Does your division, in making sales, sell only
7 through house salesmen or salesmen employed directly by
8 the company, or do you also make sales through distribu-
9 tors and agents?

10 MR. OLASOV: Sales representatives.

11 MR. LUSTIGMAN: Or representatives.

12 THE WITNESS: We go more than one way, depend-
13 ing upon the marketing group and products that we are
14 talking about.

15 Q Is the same thing true with the other divisions
16 of Philips Industries?

17 A I can't speak for all of the other divisions of
18 Philips Industries in general. I would suspect they go
19 both ways, but I don't really know. In other words, I
20 can't say whether they are all direct salesmen or all
21 manufacturers reps or, you know,

22 Q In any event, your division sells through
23 direct salesmen and also through manufacturers reps?

24 A That's correct.

25 Q How many salesmen are employed by your

1 division?

2 A Direct salesmen?

3 Q Yes.

4 A Approximately ten.

5 Q Would the same be true for the years 1973 and
6 1974?

7 A Generally, it wouldn't have been any more than
8 twelve. It might have been as high as twelve at one time.
9 These are all OEM salesmen that are --

10 Q Now, let me say OEM, as distinguished as from
11 what?

12 A As distinguished as from the other groups. I men-
13 tioned one group of which goes after market sales replace-
14 ment parts and humidifiers. They are sold to manufactu-
15 rers' representatives who sell our line and several other
16 manufacturers also, and we call them, generally, whole-
17 salers, who then stock the parts for the trade and that
18 sort of thing. There is another marketing group which
19 we call Bayley Propellair, B-a-y-l-e-y P-r-o-p-e-l-l-a-i-r.

20 Q What is Bayley Propellair?

21 A They make industrial ventilating fans and sell them
22 through manufacturers' representatives to industrial and
23 commercial ventilating systems.

24 Q Is that part of your division?

25 A Yes, but it's entirely a separate marketing group.

1 There are approximately eighty offices, give and take a
2 few in Bayley Propellair.

3 Q Eighty offices?

4 A Manufacturing representative firms that we deal
5 through on a national basis, all of whom represent our
6 line as a minor or major case, as the case may be.

7 Q Now, of the salesmen that are directly em-
8 ployed by your Division, are these salesmen given specific
9 territories?

10 A Yes.

11 Q How many salesmen in the New York territory?

12 A One.

13 Q And who is that?

14 A That is John Schuster, who lives in Syracuse.

15 MR. OLASOV: He is the fellow that moved to
16 New York last April.

17 THE WITNESS: He was mentioned earlier. He
18 moved there and was new to the field at that time
19 and, of course, you are interested in the territory
20 he covers.

21 Q Yes.

22 A All of the State of New York, Vermont, New Hampshire,
23 Maine, Connecticut, Massachusetts, Rhode Island, and
24 northern New Jersey. I think I should give you all of
25 the New England States.

1 Q Prior to Mr. Schuster, I take it, there was
2 another salesman that was responsible for this territory?
3

4 A That's correct, and he was located in New Jersey.

5 Q He sold to the New York area as well as the --

6 A Covered the same geographical territory, but chose
7 to cover from the location in New Jersey. It is not a
8 lat office or a Philips office. They work out of their
9 house and travel their territory.

10 Q And they sell the different Lau products?

11 A Those that are applicable for heating, ventilating
12 and air conditioning products that are going to be used.

13 Q To your knowledge, do the other divisions of
14 Philips also have salesmen who cover the New York terri-
15 tory?

16 A I have no direct knowledge of what they do. You can
17 get that in this letter.

18 Q Which letter is that?

19 MR. OLASOV: This is a letter between counsel.

20 THE WITNESS: The information we gave to you
21 at the beginning where there was a man in Utica
22 that we just found out to be that worked for the
23 Malta Division and, as far as the mobile home
24 recreational division and how they sell, I think
25 Jim is best qualified to speak, because that is his

1 region.

2 Q But is it your impression that the different
3 divisions of Philips Industries also have salesmen that
4 cover the New York territory?

5 MR. OLASOV: I think he answered the underlying
6 question. His impression doesn't add anything.

7 Q Well, have you ever discussed sales or other
8 matters with other corporate personnel outside of your
9 division?

10 A Very little, because our division is pretty auton-
11 omous and entirely a different market than any of the rest.
12 Certainly I discussed our performance with people at
13 Philips on a regular basis.

14 Q And have other people of Philips discussed
15 their performance with you?

16 A No, I have nothing to do with their performance.
17 I have been to, you know, like a meeting where all of the
18 marketing people were there from the other divisions, and
19 we were talking with things like promotion plans and sales
20 objectives or methods that they were going to use for the
21 coming year, that type of planning and interchange of
22 idea standpoints, but nothing specific as to how they
23 operate in what territories. I have no personal know-
24 ledge of that whatsoever.

25 Q Did you check the sales records to determine

1 the dollar volume of sales for the State of New York?

2 A As best as I can put it together, it would appear
3 to me that the total volume of the OEM Bayley Propellair,
4 and this after-market sales group, which we call Conaire,
5 C-o-n-a-i-r-e, those three groups runs less than five
6 percent, more than three, but less than five somewhere
7 in there of their total sales of those groups.

8 Q For what period of time was this?

9 A Six months, beginning April 1st and the end of
10 September 1975.

11 Q Would it be fair to say that the same three
12 to five percentage figure would govern the entire year?

13 A Yes, I think that would be fair to say.

14 Q What dollars are they talking about when they
15 say three to five percent of this division's volume in
16 New York?

17 MR. OLASOV: It may be easier to say what is
18 the total sales volume of your division for the last
19 fiscal year.

20 Q The entire year.

21 A I think back now to what I said the total volume
22 of the division includes. Whatever we did, but also
23 with the area in that group, plus Canada and overseas;
24 we had a plant in Belgium but a total blow of that is
25 about thirty-six million dollars for the previous fiscal

1 year, X of which I can break that down a little bit in
2 round numbers, okay?

3 Q Yes.

4 A Canada does about three to three and a half mil-
5 lion; Belgium about a million and Sears about five mil-
6 lion. So what is left is the total of those other three
7 marketing groups. What is left of the thirty-six mil-
8 lion.

9 Q That would be approximately twenty-seven
10 million dollars, of which three to five percent would
11 be New York sales?

12 A Right. In the previous fiscal year ending March
13 31, 1975.

14 Q Would those figures be approximately the
15 same for the year 1974, do you know?

16 A My judgment, which I have not researched yet, but
17 my judgment would say yes, because they are the same people
18 and customers.

19 Q Now, just so I have it clear, Mr. Hinman,
20 the figures you have given me, aside from Canada and
21 Belgium and Sears, are there any other sales figures, such
22 as through manufacturers' reps or other sales agents, or
23 are these the total sales?

24 A That is everything. That includes whatever is sold
25 through manufacturers' representatives, through those other

groups as well as the OEM group, which is select sales.

1 Principally, although there are some manufacturers' re-
2 presentatives in that selling organization also, there
3 are four in the country in addition to the, you know,
4 ten to twelve direct salesmen we have.
5

6 Q Mr. Hinman, do these sales figures include
7 the after-market replacement parts and humidifiers?

8 A Yes.

9 Q These were the total sales of the division
10 through all of the products in all matters?

11 A That's correct.

12 Q Of the five million dollars approximate
13 sales to Sears Roebuck, have you any figures as to what
14 percentage of these sales are for the New York stores
15 of Sears Roebuck?

16 A I have no idea, because we don't deal with the
17 stores. We sell -- we manufacture for Sears and that
18 is one contract with headquarters in Chicago, where
19 they distribute, but it's their distribution to their
20 stores.

21 Q Do you drop shipments for Sears for their
22 individual stores?

23 A To individual stores, no. More to distribution
24 centers.

25 Q Does Sears have a distribution center in

1 New York?

2 A I presume so, but I have no knowledge off the top
3 of my head where it is located.

4 Q Your understanding is they do have a New
5 York distribution center?

6 A Somewhere in the State of New York, but I am not
7 sure they do more than maybe one, but that is the pattern,
8 a multiplicity of stores throughout that area and are
9 served through a distribution area and when they need a
10 product they will drop from that point. However, we
11 don't sell to them. We bill to them anyway.

12 Q You ship your products to the Sears stores
13 in New York through the distribution center in New York?

14 A I ship them wherever they tell us to ship them.
15 It is their product at that point. They buy and pay for
16 it in Chicago.

17 Q But you ship to Sears distribution center
18 throughout the United States, including those in New York?

19 A We ship to Sears to their distribution center and
20 they presumably they have one or more in the State of
21 New York.

22 Q Of the accounts that are covered by your
23 New York salesman, do you know which accounts they are?

24 A I know the OEM salesman that lives in New York.

25 Q Yes?

1 A I can't give you the list of every account he calls
2 on, but I know several of them.

3 Q Can you tell us the ones you know?

4 MR. OLASOV: Do the names make any difference
5 or is it sufficient to have the number of them?
6 How many different customers do you really need
7 the names for?

8 MR. LUSTIGMAN: If he knows them off his head,
9 why not?

10 MR. OLASOV: Presumably this is trade in-
11 formation. I don't see how it benefits you. You
12 see my problem. You can get all the information
13 you need by having a number of customers that are
14 being told what kind of customers there are.

15 MR. LUSTIGMAN: Let's start with that and
16 see if it's sufficient.

17 MR. OLASOV: Let's look at it again.

18 THE WITNESS: What is the question?

19 Q The question, sir, the accounts covered by
20 your New York salesman in New York, approximately how
21 many accounts are covered by Mr. Schuster and his pre-
22 decessor in New York?

2 A You say the number of accounts? You can get that
23 down to a very small one, which I am not familiar, and
24 doesn't amount to much, and I don't know. I wouldn't
25

1 hazard a guess as to what the number is, but I would
2 call them principal accounts. They are basically the
3 kind of people that make heating, ventilating and air
4 conditioning equipment and are located in the State of
5 New York. There isn't more than a half a dozen principal
6 people in that category.

7 Q And how many non-principal people would there
8 be?

9 A It's strictly a guess. If you want -- I would say,
10 roughly, fifteen to twenty.

11 Q Is this only regional equipment that is from
12 Mr. Schuster?

13 A Correct.

14 Q Of the other equipment, other than the ori-
15 ginal equipment --

16 MR. OLASOV: You are using that, I take it
17 you mean, products made by Lau for original equip-
18 ment manufacturers. They don't manufacture ori-
19 ginal equipment. That was the prior testimony.

20 Q Correct.

21 A After the after-market of replacement parts and
22 other equipment that are sold to various manufacturers'
23 representatives, how many of those are located in New York?

24 MR. OLASOV: Can we have that question read
25 back, please?

(Pending question was read.)

MR. OLASOV: I think that question is bad as to form.

Q Mr. Hinman, as I understand it, your division sells two basic types of equipment: one is known as original equipment -- excuse me, sells two types of customers.

One type of customer known as original equipment manufacturers and the other type of customer is known as those that handle replacement parts, is that correct?

A Did you say that these are two principal ways we sell?

MR. OLASOV: Type of customers.

THE WITNESS: It is true, and there is another.

Q And the third one is the humidifier?

A No, the third one group that sells industrial ventilating fans that Bayley Propellair group. That is separate.

Q The Bayley Propellair, is that part of your division?

A Yes. Let me try and clarify this for you. The marketing group that sells in the after-market is what we call Conaire sales group. They sell through manufacturers' representatives and they sell the parts or complete replacement blowers and fans and also humidi-

1 fiers and other products. What we are looking at here
2 is not necessarily different products, but some of the
3 same products that we sell to the OEM or some place
4 else sold through a different channel, and that is the
5 kind of channel that someone goes to for a replacement
6 part. Generally those customers are wholesalers. So
7 we have the three different groups; the original equip-
8 ment, the product group, the Conaire sales group that
9 sells replacement parts to wholesalers and the industrial
10 ventilating, which is Baley Propellair?

11 A Right, and the Sears thing which he handles direct.

12 Q And Sears would be the fourth? Just so I
13 am clear, the figure you gave me before of approximately
14 twenty-seven million dollars of those domestic sales,
15 this covers all four of these groups?

16 A That's correct.

17 Q Your New York salesman, Mr. Schuster, merely
18 handles the first group, that is the original equipment
19 manufacturers?

20 A That's correct.

21 Q Now, we have the Conaire sales group that
22 sells replacement parts to the wholesalers. Are these
23 salesmen employed by your division or are they manu-
24 facturers' representatives or both?

25 A In the sense that I understand your question, no,

1 they are not in any way employed by us. They are in-
2 dependent businessmen acting as manufacturers' repre-
3 sentatives for us and for other people.

4 Q And they sell to wholesalers?

5 A Right.

6 Q And you can deal directly with wholesalers?

7 A Right.

8 Q Of the manufacturers' representatives of
9 Conaire sales group, how many of them are located in
10 New York?

11 A Two.

12 Q And who are they?

13 A A company called Thermal Mechanical in Flushing, and
14 Meyer, Bressen, Inc., in Albany, New York.

15 Q Do you have any figure indicating the dollar
16 volume of sales that you made to Thermal Mechanical
17 in Flushing and Meyer Bressen in Albany, New York?

18 A Of the two, Thermal Mechanical is the larger,
19 and that firm, as I recall, they are something less
20 than two hundred thousand dollars. I think the last
21 six months was around ninety thousand dollars.

22 Q So you sell approximately two hundred
23 thousand dollars a year to Thermal Mechanical?

24 A Right.

25 Q And would the same be true for the years

1 1973 and 1974?

2 A I don't know without researching, but generally
3 dealing, yes.

4 Q And as to the Meyer Bressen, what were the
5 annual sales to that company?

6 A They are less than ten thousand dollars in the
7 last six months.

8 Q So that would be --

9 A So that would be between fifteen and twenty a
10 year, something like that.

11 Q Would the same be true, to your knowledge,
12 for the years 1973 and 1974?

13 A Generally speaking.

14 Q For the years 1973 and 1974, did you have
15 any different or additional representatives for the
16 New York area?

17 MR. OLASOV: I am going to object to that
18 as not relevant, but I will let him answer that
19 question.

20 MR. LUSTIGMAN: Why is it not relevant?

21 MR. OLASOV: You have been asking these
22 questions of prior years before you are trying
23 to determine that Philips as a whole is doing
24 business before. That's one thing, but what
25 they are doing now is something else. You have to

1 keep current.

2 MR. LUSTIGMAN: You don't think it's rele-
3 vant, the time of the matters?

4 MR. OLASOV: No.

5 MR. LUSTIGMAN: The time of the suit?

6 MR. OLASOV: I think that's under Section
7 302 and this is beyond this man's comprehension.
8 I am just noting my objection for the record.

9 Q Would you answer the question, please?

10 MR. OLASOV: Do you have the question in
11 mind?

12 THE WITNESS: As I understand the question,
13 were these the same representatives that we had in
14 1973 and 1974?

15 Q Correct.

16 A I think so, but what I have to tell you is that
17 of course I said I have been vice president of marketing
18 for only about a year prior to that. I only had control
19 of the OEM group. But prior to that I get fuzzy. I
20 know this Thermal Mechanical has been with us a good
21 amount of time. I am not sure about the one in Albany.
22 So that is the extent of my knowledge.

23 Q Would there be any records available that
24 would indicate the total purchases made by Thermal Mechan-
25 ical and Meyer Bressen for each of the years 1973 through

1 1975?

2 A We would have some access to be able to dig that
3 information out, yes. However, it is hard to ascertain
4 exactly what went into the State of New York, because
5 both of them -- I know Meyer Bressen does cover ter-
6 ritories outside of the State of New York, like Vermont,
7 as though it was part of New York State. There's also,
8 you know, another manufacturers' representative that
9 sells in New York State, but doesn't live there.

10 Q Who is that?

11 A He is located in Pittsburgh, Rep Lin. He sells in
12 that name of the firm.

13 Q Rep Lin Sales sells in New York State?

14 A He sells in Western New York State, West Pennsylv-
15 ania and Eastern Ohio.

16 Q Do you have any information as to the dollar
17 volume of sales in New York State by Rep Lin Sales?

18 A He ran about between thirty and thirty-five thousand
19 dollars in the last six months in New York State, from
20 what I am told by people who work for me.

21 Q Would the same be true that you would approxi-
22 mately double that figure for the annual sales figure?

23 A Yes.

24 Q Are there any other manufacturers' repre-
25 sentatives who sell your products in the State of New York?

1 A Yes, and are associated with the Bayley Propellair
2 group.

3 Q Let's hold that for a second. Of the Consaire?

4 A No.

5 Q Just those three?

6 A That are currently manufacturers' representatives
7 selling in the State of New York, yes.

8 Q All right. Let's get into the Bayley Pro-
9 pellair group. What does that consist of?

10 A The locations you mean of the manufacturers?

11 Q Yes.

12 A There are three currently: William L. Jacobs,
13 in Schenectady. T. M. I. Sales, located somewhere in
14 the New York area here.

15 Q Manhattan area?

16 A Either New York or Long Island, I am not sure.
17 And Korts Equipment in Rochester, New York.

18 Q Aside from these three companies, are there
19 any other companies not physically located in New York,
20 but that sell in New York?

21 A Not to my knowledge, in this group.

22 Q What was the annual volume of purchases for
23 each of these three companies?

24 A I don't have those figures individually.

25 Q Do you have them in total?

1 A The total of the three is, as I recall, very poor.
2 It's generally in the order of one hundred thousand
3 dollars.

4 Q Annual basis or the last six months?

5 A In an annual basis; that's about right.

6 Q Do you have any documents with you that
7 might refresh your recollection more accurately?

8 MR. OLASOV: Some of the documents he had
9 he brought and prepared for counsel.

10 THE WITNESS: I don't have anything.

11 MR. LUSTIGMAN: Are you claiming all the docu-
12 ments are privileged?

13 MR. OLASOV: I am not claiming all the docu-
14 ments he has are privileged.

15 MR. LUSTIGMAN: Let him pull out what he has.

16 MR. OLASOV: The documents that are privileged
17 that are prepared are prepared at my request, and
18 those documents are privileged.

19 THE WITNESS: That total for those three is
20 about thirty-four thousand dollars for the last six
21 months and by the largest one of the three in the
22 TMI sales.

23 Q Seventy-five to one hundred thousand dollars
24 per year?

25 A Right, that's in the same ball park originally.

1 something less than one hundred thousand dollars total
2 annual volume is about what they are pulling out of
3 the area.

4 Q May I ask you what you consulted in in de-
5 termining this figure?

6 A I consulted the sales manager of this that works
7 for me of this sales group.

8 Q He gave you a figure which you wrote down?

9 A That's right.

10 Q Mr. Hinman, has this completely covered your
11 information and knowledge as to the sales of the Lau
12 Industry Products in the State of New York?

13 A I believe it has.

14 Q Now, Lau, I take it, does not manufacture
15 these products themselves?

16 MR. OLASOV: I object to the form of the
17 question.

18 MR. LUSTIGMAN: All right, I will rephrase it.

19 Q Am I correct that Lau does not manufacture
20 any of these products themselves?

21 A That is correct.

22 Q I am not correct?

23 A Basically, that's what we do.

24 Q You do the manufacturing yourself? All right.

25 MR. OLASOV: Mr. Lustigman, I think I can

1 help you here. There was a phrase the original
2 equipment manufactured. That means someone that
3 puts together a whole thing. These are component
4 manufacturers. They manufacture components and
5 that's about all they do. I don't want you to
6 misunderstand. You can put that question to him.

7 Q Did you manufacture the various components
8 of the Lau Division, and these are either sold as re-
9 placement parts or as original equipment for others to
10 assemble and manufacture in addition?

11 A For example, most every furnace has a blower in it,
12 but very few of the furnace manufacturers have blowers.

13 Q So that you manufacture the blowers?

14 A We make them and our competitors make them and
15 sell it to them and they incorporate that burner to that
16 furnace or it may be an air conditioner or a central
17 stationary unit to heat the air conditioning or venti-
18 lating system and that is the primary market we are look-
19 ing for. But really, we are in air moving. We are in
20 the air moving business, and anybody that wants to use
21 a fan or blower of the type we manufacture, those are
22 the types we incorporate into their unit. Whatever it
23 might be, these are the kind of customers we have.

24 Q Then you have replacement parts and then you
25 have Sears where you make the whole thing?

1 A That's right, and industrial ventilating group
2 which is separate.

3 Q In order for you to manufacture the various
4 components, you buy various raw materials I take it from
5 others?

6 A Yes.

7 Q Do you have any knowledge as to the purchases
8 made by your division of the various raw materials that
9 comprise what you manufacture?

10 A I have a limited knowledge. Of course, I have
11 knowledge of the fact we do buy these raw materials but
12 a limited knowledge of exactly whom we buy them from,
13 because my area of responsibility is marketing and not
14 purchasing or manufacturing within the division.

15 However, it is my impression that we buy
16 very little if anything in the way of raw material or
17 component parts from anyone located in the State of
18 New York. They are too far away, generally. If we can
19 find a source or two where we are and where we don't
20 have any manufacturing facilities in the State of New
21 York, the closest base would be in Ohio.

22 Q Now, have you in this answer of yours, with
23 respect to whom you buy your materials from, is this a
24 guess or have you actually looked at any corporate
25 records to determine the identity of the purveyors of

1 the raw materials?

2 A It is based on general knowledge and impressions,
3 not looking at corporate records.

4 Q Did you, prior to coming here, to testify,
5 discuss this question with anyone at your corporation?

6 A It was discussed in general, and as I recall, the
7 answer that I heard is what I have given you. It is
8 negligible if any that we know off the top of our head,
9 the purchases of component parts of material from anyone
10 in the State of New York.

11 Q Whom was that discussed with?

12 A With our vice president of manufacturing.

13 Q Who is that?

14 A His name is Presley, Ron Presley.

15 Q Anyone else?

16 A That's the primary person who is responsible for
17 manufacturing.

18 MR. OLASOV: Anyone else you discussed it
19 with?

20 THE WITNESS: I can't recall. There are,
21 you know, a couple of other people that might
22 have been involved in that discussion, but I can't
23 say for sure whether they were or weren't. I
24 remember discussing it, you know, I will give you
25 the names of the other people that would have know-

1 ledge of the subject within the company, if that's what
2 you're asking.

3 Q Yes. Who are they?

4 A Al Jansen, J-a-n-s-e-n. He is the materials mana-
5 ger. He reports to Presley and basically that's his
6 function as material control purchasing.

7 Q Anyone else?

8 A The only other person who might have been there
9 was the then president of the division, but I don't
10 remember if he was part of this discussion.

11 Q Was that Mr. Nesbitt?

12 A Yes.

13 Q I think you said your impression is that the
14 purchases of raw materials are negligible if any.

15 MR. OLASOV: To his general knowledge.

16 Q Do you have any specific knowledge as to
17 how much raw materials are purchased from sources in
18 the State of New York?

19 A No knowledge, no.

20 Q Are there records in your company readily
21 available which would indicate the identity of where the
22 various raw materials are purchased from?

23 A I don't know of any such records. They are or-
24 ganized by vendor by state to be able to conveniently
25 pull that out.

1 Q Is that on a computer or not?

2 A I don't know how it is organized to be able to go
3 into the record and find out.

4 Q Doyou or does your division engage in ad-
5 vertising of its products?

6 A Yes.

7 Q Where and in what manner are these products
8 advertised?

9 A Well, it varies with the product, but generally
10 the bulk of the advertising is done in trade journals,
11 those kind of magazines where you are trying to reach
12 the regional equipment manufacturer or wholesalers.
13 Generally speaking, we don't do total advertising.

14 Q You say generally speaking, on specific
15 instances, where do you do that?

16 A It may be -- I don't have specific knowledge of
17 them, the kind of thing that would be if there would be
18 a cooperative venture with a local distributor, a local
19 wholesaler, if you wanted to advertise humidifiers or
20 some such thing as that, but there is no involvement
21 in the regional equipment manufacturing.

22 Q Is there any form of advertising, other than
23 trade journal or cooperative advertising?

24 A Not to my knowledge.

25 Q Would you be the one who is knowledgeable

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1 of the things?

2 A Yes.

3 Q In other words --

4 A The advertising budget for our division is under
5 my supervision.

6 Q Do you have a list of the various trade
7 journals in which your company advertises its products?

8 A I wouldn't pretend to have a complete list. I can
9 give you some examples that we do advertise in.

10 Q All right. Do you have records at the
11 company readily available that would indicate the identity
12 of the various journals?

13 A Of the trade journal advertising?

14 Q Yes.

15 A We can locate that information, yes, for the cur-
16 rent year.

17 Q To the best of your knowledge, without con-
18 sulting these records, can you identify the various trade
19 journals in which you advertise?

20 A As I say, I can give you as many as I can think of,
21 but I can't pretend that to be a complete list, because
22 I may miss one or two.

23 Q All right.

24 A Air conditioning, heating and refrigeration news
25 is one of them. Air conditioning business, heating

1 and air conditioning, plant engineering, plant manu-
2 facturers, I think those are the principal ones that
3 we advertise in in any degree of continuity.

4 Q Any others to your knowledge?

5 A As I say, there are probably some more, but I can't
6 think of them. There are other magazines like Supply
7 House Times, and we have appeared in that one in the past.
8 I don't know if we are currently in their program this
9 year or not. That's all I can think of.

10 Q Who prepared the advertising that appears in
11 these various publications?

12 A By that, do you mean an ad agency that we work
13 through?

14 Q Yes.

15 A Which we provide some of the import ourselves, we
16 do go through an advertising agency, David Burnap .

17 Q Where are they?

18 A Dayton, Ohio.

19 Q Any other ad agencies used?

20 A No.

21 Q To your knowledge, do any of the other
22 divisions use ad agencies?

23 A They use different agencies, and I don't know
24 what their name is.

25 Q Do you know where they are located?

1 A I am not sure. That is controlled out of the
2 corporate office of Philips, and Lau has been dealing
3 with David Burnap for years and years, long before
4 Philips owned us. So that continuity has been maintained,
5 and they had their own advertising and they are the people
6 working through the agency.

7 Q You don't recall any of the other agencies
8 that Philips uses?

9 A I have heard it, but I can't.

10 Q Are they located in New York?

11 A I am not sure, but I don't think so.

12 Q Would you have any record that would in-
13 dicate the identity and location of this other ad agency?

14 A I can find that out, but it is not our division,
15 because we don't have anything to do with it. I don't
16 know the man who does.

17 Q If we leave a space in the transcript --

18 MR. OLASOV: Okay, I must say, as a general
19 rule, I prefer to have interrogatories, but in
20 this instance, it's okay.

21 Q The various trade journals that you men-
22 tioned, to your knowledge, are any of them published
23 in New York?

24 MR. OLASOV: I object. I am reserving most
25 of my objections. I object to this, on the ground

1 of relevancy, unless you determine if a local
2 market, but it seems to make no difference. You
3 can answer that.

4 A To go down that list to tell you where the loca-
5 tions are and where the printing is done and where the
6 headquarters of every one of those publications is, is
7 way beyond the scope of my knowledge. There are a
8 couple that I know of, but I couldn't begin to speak
9 of that list. All of these arrangements are made and
10 billed to the agency, and you are dealing with a total
11 program of advertising work with the agency, and they
12 recommend the type of publications and we agree or dis-
13 agree, and based on our experience, and we come up with
14 a program where its printed and published and really is
15 secondary to my interest. I never pursued it.

16 Q You don't know whether any of them are printed
17 or published in New York?

18 A I can't answer the question in all of those I have
19 on that list.

20 Q Do you know if any of them are printed or
21 published in New York?

22 MR. OLASOV: Note my objection.

23 A I don't know if any of them are published in
24 New York.

25 Q You said all you didn't know -- I am wonder-

1 ing if you knew about any of them.

2 A I see what you are trying to do. The answer is
3 still the same. I don't know.

4 MR. OLASOV: Do you want to tell him --

5 MR. LUSTIGMAN: I am interested in the ones
6 in New York.

7 Q To your knowledge, are these magazines which
8 carry your advertising distributed nationally to the
9 trade?

10 A Yes.

11 Q In addition to the trade journals you men-
12 tioned, Co-op Advertising with local wholesalers, would
13 these include wholesalers located in New York that are
14 serviced by the Conaire and Bayley Propellair groups?

15 A What I said was, there may be some coop advertising,
16 but I have no personal knowledge as to where that
17 exists or whether it exists or not. As a general broad-
18 side policy, it is a case of working out what is the
19 best kind of promotion by a specific program and data
20 is done by the selling level of people, so I don't know
21 from my own personal knowledge.

22 Q But you have records?

23 A Where that exists and where it doesn't and it
24 would, you know, depend upon the period of time and
25 whether we did it or we might do it one year and not the

1 next. It's not a recognized, sanctioned program of a
2 total national basis of co-op advertising. It's very
3 spotty and very minimal.

4 Q But do you have records available which would
5 indicate the co-op advertising ventures that you sponsored
6 in New York?

7 MR. OLASOV: For what period of time?

8 MR. LUSTIGMAN: Again, for the period of
9 time 1973 to date.

10 A I don't know how to dig that out. It is something
11 we could dig and try to find as much of it as possible,
12 but it's buried, and I don't know if there is anyone in
13 the place I can go to to get it.

14 Q How about the last year?

15 A It's the same answer, to be available to make an
16 exclusive statement, I would have to ask a lot of ques-
17 tions and we have to do a lot of digging and then to be
18 sure, you would have to have the total picture which
19 would be very difficult.

20 Q Would you have those records easily available
21 that would give you an indication of co-op advertising
22 for the last year?

23 A An indication of co-op advertising?

24 Q You mentioned to be one hundred percent accu-
25 rate, it would take an awful lot of digging. I am trying

1 to find out if you have a record that would give you a
2 clear picture of it, even though it might be one hundred
3 percent accurate.

4 A Between the knowledge of the wholesale document
5 of record, but within the knowledge of the people that
6 are responsible for the promotion of that product group,
7 based on their recollection and what they know of what
8 they have done with given accounts, I think we can get
9 a pretty representative answer that would give you a
10 consensus thing. My judgment tells me it's minor, but in
11 the interest of being complete, when you asked the ques-
12 tion, yes, there may be some, but I don't know to what
13 specific extent. One other area to be complete in answer-
14 ing, when I say co-op advertising, what do you mean by
15 co-op advertising? Like newspapers and that sort of thing?

16 Q I am not sure what I had in mind. I think
17 you used the term that you had advertising in trade
18 journals and responsible co-op programs with wholesalers.

19 MR. OLASOV: I don't think you used the
20 word programs, but that is the upshot of his
21 testimony. It's spotty.

22 THE WITNESS: I don't think I can add any
23 more than that.

24 Q Mr. Hinman, other than your salesman, Mr.
25 Schuster and the other gentleman that you mentioned, do

1 any other corporate personnel from Philips come to New
2 York for other business purposes?

3 A What do you mean other business purposes?

4 Q Let's say for any business purposes; do you
5 or to your knowledge, other corporate representatives
6 travel to New York for business purposes?

7 MR. OLASOV: You are talking about now?

8 A Let's talk about Lau. When you say corporate --

9 Q Let's talk about Lau for the moment, and
10 then we can get into your knowledge.

11 A From the standpoint of the Lau Division, there
12 can be and/or occasional trips of people from our office
13 that go into the State of New York on a sales support
14 basis, a service basis, a consulting basis that is
15 basically sales support.

16 Q What do you mean by sales support?

17 A To service the customers needs or to look into,
18 let's say we ship some products in there and there was
19 something wrong with it and we had to send a qualified
20 man in or somebody to inspect it and determine what was
21 wrong on that sort of thing. Or a bit of the selling
22 involved in this is done to engineers in the company,
23 because they are signing their products and in trying
24 to sell their product to their design, we are working
25 closely with the engineering department. We may send

1 some engineering men or a specialist type of person into
2 backup technical information that the salesman may not
3 have had at his fingertips, which will provide engineer-
4 ing samples, you know, try this blower or that fan blade
5 until we get the product to their design.

6 Q So, the other corporate personnel do come
7 to New York for sales support, engineers and other cus-
8 tomers?

9 A Well, we are going to the same customer, but to
10 his engineers it is a different firm.

11 Q Are these engineers, does the sales support
12 consists of engineers employed by Philips who come to
13 New York to meet these other engineers?

14 A They may be engineers and they may be marketing
15 people going in there for various reasons. I go in to
16 this account to maintain a high level contact with these
17 corporations and, you know, it's part of the overall sales
18 activity.

19 Q So you come to New York to meet with other
20 executives?

21 A Occasionally.

22 Q Who besides yourself and the engineers come
23 to New York from your division?

24 A Like who may ever go?

25 Q Who does go?

1 A Well, the OEM general marketing manager who works
2 for that would go occasionally. His name is Henry
3 Seebach.

4 Q Who does Mr. Seebach go to see in New York?

5 A It could be anyone of the OEM accounts. Gener-
6 ally he concentrates on the principal ones.

7 Q Do you have any knowledge of the identity of
8 the principal OEM accounts?

9 MR. OLASOV: I think we covered that earlier,
10 about an hour ago. We went into a number of them.

11 Q All right. Is it your testimony, Mr. Hinman
12 that the identity of these accounts is sometype of trade
13 secret?

14 MR. OLASOV: Wait a second. I am going to
15 object to that question. That goes to a legal
16 point. Obviously, a customer's list matters held
17 in confidence is important. I don't see where it
18 benefits you. If you had some pressing need for
19 it, as you know, we would give it to you, but I
20 don't see where it goes here.

21 Q Mr. Seebach comes to New York to visit the
22 OEM accounts?

23 A Yes, he is the person that is responsible on a
24 national basis for all of the product sales to the OEM
25 and he travels wherever that takes him.

1 Q And he comes to the New York OEM accounts?

2 A Yes.

3 Q Do you come to visit the OEM accounts?

4 A Yes.

5 MR. OLASOV: He testified he comes on occasion.

6 Q And engineers come on occasion?

7 A Yes.

8 Q Who else comes?

9 A The senior product manager, and his name is Jim
10 Schwier. He comes on occasion to lend his technical
11 expertise.

12 Q Who else comes to New York?

13 A That's primarily it.

14 Q That would cover the sales support?

15 A Yes.

16 Q You also mentioned people that come here
17 for various consulting purposes.

18 A That's what I mean by sales support.

19 Q Sales support and consulting would be the
20 same?

21 A It's the general term, whatever it might be. It's
22 all in a general category of supporting the sales effort.

23 Q I believe you mentioned that people come here
24 for various service problems?

25 A That can happen.

1 Q Who comes to New York when there is a service
2 problem?

3 A Well, the person that I can think of that has been
4 here, his name is Clarence Repp, and he is quality con-
5 trol manager in the Dayton plant.

6 Q Anyone else?

7 A Other than the salesmen themselves, those are the
8 people I already mentioned. He is the only one that I
9 know of that has come into the State of New York in
10 the last couple of years.

11 Q To your knowledge, Mr. Hinman, do other re-
12 presentatives of other divisions of Philips besides the
13 Lau Division, do they also come in on a same basis for
14 a sales support consulting and service?

15 A I have no knowledge of how they handle that.

16 Q Right now, what do you have?

17 A Virtually none; the largest other division of
18 Philips is the mobile home recreational vehicle group.
19 We have the man who runs this whole territory here.

20 Q But you have no knowledge?

21 A As far as Malta and Glasgow, I have no knowledge
22 as to how they operate in the State of New York particu-
23 larly.

24 Q Aside from the trip here, which you just testi-
25 fied about, are there other business purposes for which

1 representatives of Philips, to your knowledge, travel to
2 New York, such as business meetings, industrial associ-
3 ation meetings and things of that type?

4 MR. OLASOV: I suppose I ought to object
5 as to whether trade meetings are held in New York
6 or elsewhere. That would have nothing to do with
7 Philips being here. If they are held here, some
8 of the other aspects of your question might be
9 relevant, but as to trade association meetings, I
10 am objecting to that. It has no bearing whatsoever
11 on this hearing.

12 THE WITNESS: Other than trade association
13 activities which happen to occur here, you know,
14 if it's a trade association we are involved in,
15 yes, we come, but I think I have no knowledge of
16 any regular activity that Philips or Lau does that
17 occasionally requires visits to the State of New
18 York. I really don't think there are any. I am
19 trying to be careful. I don't know of any.

20 Q Philips has traded on the New York Stock
21 Exchange, right?

22 A Yes.

23 Q To your knowledge, do any corporate personnel
24 come to New York for any security purposes, such as
25

1 meetings of security and a list and things of that nature?

2 A Well, beyond the scope of any activity, I don't
3 know how they handle that portion of its business. That
4 would be up to the Chairman of the Board and the Board of
5 Directors and the president and so forth. I don't know
6 what they do.

7 (Whereupon, a recess was held at 11:30 A.M.,
8 and resumed at 11:45 A.M.)

9 Q Mr. Hinman, have you brought any documents
10 or records from your company, which relate to the matters
11 we have testified to today?

12 MR. OLASOV: I can answer that in part. The
13 corporation did prepare at my request, in response
14 to some letters I sent some documents in regard to
15 them they are privileged. If you have documents,
16 I request you make that in writing.

17 MR. LUSTIGMAN: Well, can we identify what
18 is here today?

19 THE WITNESS: The internal correspondence
20 giving the opinion --

21 MR. OLASOV: I consider this privileged. It's
22 been done, prepared at my request in response to
23 my letters.

24 THE WITNESS: There is nothing mysterious in
25 there. You have in terms of percentages or some

1 other fashion the information that I have.

2 MR. OLASOV: If you want to have my corres-
3 pondence --

4 MR. LUSTIGMAN: I don't want your correspon-
5 dence. Did the company prepare check records which
6 indicates the various information regarding their
7 business in New York?

8 MR. OLASOV: They are privileged comments
9 as to the settlement and other matters. I am not
10 going to produce those. I am sure you will respect
11 that privilege.

12 MR. LUSTIGMAN: As to any internal corres-
13 pondence between counsel, I wouldn't pursue that,
14 but if they don't check various records --

15 MR. OLASOV: I think things prepared at my
16 request are privileged. We looked at some of
17 these things together, and most of them have been
18 formal. If you want to have things marked, I will
19 be glad to produce them, but I wouldn't let you
20 see them.

21 Q Did you bring with you, Mr. Hinman, anything
22 other than written responses to questions from counsel?

23 A No.

24 Q Did you bring any actual corporate records?

25 A Annual reports?

1 Q Anything other than the annual reports.

2 A No.

3 MR. LUSTIGMAN: Thank you, Mr. Hinman.

4 MR. OLASOV: I will have two or three short
5 questions.

6 EXAMINATION BY

7 MR. OLASOV:

8 Q Mr. Hinman, in your prior testimony, you
9 indicated a certain volume of sales for which goods were
10 shipped by Lau into New York. How were those invoiced?

11 A They are invoiced in our divisional forms.

12 Q Where are those invoices prepared?

13 A They are prepared in Dayton, most of them, either
14 at the plant of manufacturing in the area generally,
15 they are FOB point of manufacturing.

16 Q And to be more precise, do these forms in-
17 dicate when and where ownership of the goods sold pass?

18 A Well, it's my understanding the term of the sale
19 being FOB point of manufacturing which is stated on the
20 form and that the title transfer when the merchandise
21 leaves the dock, whether or not that specifically is de-
22 tailed in the fine print on the back of the invoice in
23 the broad terms of conditions and sales statement, I
24 will have to check that out and find it out.

25 Q Can you identify this document that I am

1 showing you?

2 A That is an annual record of Philips Industries
3 for the fiscal year ending March 31, 1975.

4 MR. OLASOV: May we have that marked for
5 identification. Do you have a copy?

6 MR. LUSTIGMAN: I don't have one. I will
7 get one, though.

8 (Above mentioned annual record of Philips
9 Industries for the fiscal year ending March 31,
10 1975 was marked Plaintiff's Exhibit 1 for identi-
11 fication.)

12 MR. OLASOV: Can we put that in evidence?

13 MR. LUSTIGMAN: You can't at this time, but
14 later on.

15 Q Now, I notice on page 14 and 15 a directory
16 of manufacturing facilities, with reference to Lau for
17 which you have been speaking. Does it have any manu-
18 facturing facilities with reference to Lau for which
19 you have been speaking. Does it have any manufacturing
20 facilities in New York?

21 A There are no manufacturing facilities for Lau
22 in the State of New York.

23 Q Does it note in the annual report the list
24 of distribution centers? Does Lau Division have a
25 distribution center?

1 The Lau Division had a distribution center?

2 A No, not in the State of New York.

3 Q I mean at all.

4 A There is one public warehouse facility that we
5 distribute the Conaire sales products from, and that's
6 in Cleveland, Ohio.

7 MR. OLASOV: I have no further questions.

8 MR. LUSTIGMAN: I have none.

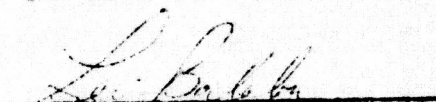
9 (Whereupon, at 12:05 P.M., the examination
10 of this witness was concluded.)

11 _____
12 Subscribed and sworn to before me

13
14 this _____ day of _____ 1975
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1
2
3 I, LEWIS BALANBAN, of 140 Nassau Street,
4 New York, New York, do hereby certify that the
5 within deposition, given by DONALD D. HINMAN, JR.,
6 which was taken before me on December 9, 1975, at
7 the offices of Sullivan & Cromwell, Esq., 48
8 Wall Street, New York, N.Y., was reported steno-
9 graphically by me and reduced to typewriting
10 under my supervision, and I certify that the said
11 deposition is a true record of the testimony given
12 by the witness therein.

13 I further certify that I am not an attorney
14 associated with, or an employee of, any attorney
15 for the parties in said action and have no interest
16 whatsoever in the above, nor have I any consanguinity
17 or affinity to any of the parties in this action.

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132a

DEPOSITION OF JIM HORNBERGER, REGIONAL SALES MANAGER
OF MOBILE HOME RECREATIONAL VEHICLE, DIVISION OF
PHILIPS INDUSTRIES OF DECEMBER 9, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

FRAMEN STEEL SUPPLY COMPANY, INC., :

Plaintiff, :

-against- :

PHILIPS INDUSTRIES, INC., :

Defendant. :

-----X

48 Wall Street
New York, New York
December 9, 1975
12:05 P.M.

EXAMINATION BEFORE TRIAL of JIM HORNBERGER,
taken pursuant to notice, held at the offices of
Sullivan & Cromwell, Esqs., at the above time and
place, before a Notary Public of the State of
New York.

ACME REPORTING SERVICE
SHORTHAND AND STENOGRAPHIC REPORTERS
NOTARIES PUBLIC
140 NASSAU STREET
NEW YORK CITY
TELEPHONES: DECKMAN 3-0864-0888-0888

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DAVID TULCHIN, ESQ..
of Counsel.

- - -

IT IS STIPULATED AND AGREED by and between
counsel for the respective parties hereto that
the sealing, certification and filing of the
within examination be, and the same hereby are
waived;

IT IS FURTHER STIPULATED AND AGREED that
the within examination may be signed and sworn
to before any notary public or an officer author-
ized to administer oaths with the same force
and effect as if signed and sworn to before a
Clerk of this Court;

IT IS FURTHER STIPULATED AND AGREED that
all objections except as to the form of the
question be, and the same hereby are, reserved
to the time of the trial;

BEST COPY AVAILABLE

1 IT IS FURTHER STIPULATED AND AGREED that
2 a copy of this deposition shall be furnished to
3 the attorneys for the defendant by the attorneys
4 for the plaintiff without charge.

5
6 JIM HORNBERGER, called as a witness, being
7 first duly sworn by a Notary Public of the State
8 of New York, was examined and testified as follows:

9 EXAMINATION BY

10 MR. LOSHIGAN:

11 Q What is your position at Philips Industries?

12 A Regional sales manager.

13 Q This is for which division?

14 A Mobile Home Recreational Vehicle Division.

15 Q Which region are you sales manager of?

16 A Northeast.

17 Q I take it that includes the New York area?

18 A Yes.

19 Q Can you tell me what the Mobile Home Recreation-
20 al Vehicle Division of Philips is? What do they make and
21 sell?

22 A It consists of eight different products. Galvanized
23 roofing, axles, fiberglass tubs and showers, windows, doors,
24 water heaters, gas bottles, and vending equipment. I don't
25 believe I missed any. You did mean eight?

1 Q Yes.

2 Are these products all manufactured by your
3 division?

4 A The only one that is not manufactured by us is the
5 steel doors. We purchase from Consolidated Industries
6 from Fredericksburg, Virginia, and basically, the other
7 products in there line are manufactured by us.

8 Q Where are these products manufactured?

9 A Where?

10 Q Yes.

11 A It's a pretty complicated answer. At one point
12 I think Philips had twenty-six manufacturing facilities
13 in their mobile home division in the past year, year and
14 a half. We have closed a number of facilities, so
15 twenty-six is no longer an accurate count, and I don't
16 know what would be accurate.

17 Q re, or have any of these products been
18 manufactured in New York?

19 A No.

20 Q What type of accounts are these products sold
21 to?

22 A Under the broad classification of OEM. That con-
23 sists of three different groups; mobile homes, recreational
24 vehicles, or modulars.

25 Q Are these sold to any other types of accounts,

1 other than mobile homes, recreational vehicles or modular
2 housing:

3 A Not within my jurisdiction, no.

4 Q At anyone's jurisdiction in the company?

5 A Well ---

6 MR. TUICHIN: You are talking now just about
7 products of the mobile home and of the division,
8 am I correct?

9 Q That is your division, right?

10 A Right.

11 Q Are these products, such as the hot water
12 heater or tubs and showers, are they sold for any purpose
13 other than mobile homes, recreational vehicles or modular
14 housing?

15 A Yes.

16 Q What would that be?

17 A The tubs and showers are an addition to being sold
18 by my group are also sold by a sales force under Glasgow
19 and their primary thrust would be a conventional housing
20 market, and the same holds true with the wooden windows.
21 I sell wooden windows to modular and mobile homes in
22 addition to the other products.

23 Q For conventional housing?

24 A Yes.

25 Q How about the other products, the house water

1 heaters?

2 A You are asking specifically about the hot water
3 heaters?

4 Q The others in general.

5 A Roofs and axles are for the trailer homes and
6 campers; tubs and showers I explained. Windows I have
7 explained. We sell a large number of windows to the
8 mobile home customers and wooden windows are sold by my-
9 self plus the Malta Division. Doors are mobile homes
10 and campers. Gas bottles are campers. Vending is
11 mobile homes and campers, and the hot water heaters are
12 mobile homes and campers.

13 Q In other words, the hot water heaters are not
14 sold for the conventional homes?

15 A Not at this time.

16 Q Were they sold during 1973 and 1974?

17 A Yes.

18 Q During those years, were they sold for con-
19 ventional --

20 A I am not sure of the transportation of time. My
21 general knowledge is Phillips acquired the residential
22 line from Carrier, and we built the plant with the inten-
23 tion of marketing that as Carrier had, and we are no longer
24 in the business of that, so I am not sure of the bracket
25 of time when we were actively pursuing that product.

Q How long have you been with the company, Mr.

Hornberger?

A Four years three months.

Q What are your duties as regional sales manager of the northeast region?

A Basically I supervise the selling efforts of three different salesmen and what the word supervise entails can be one page or two or three pages long.

Q Depending on how small you write.

A Right.

Q Who are the salesmen and where are they located?

A Gil Gregory, Greenville, North Carolina; Chris Treiber, Lancaster, Pennsylvania; and Phil Carver, Gallaton, Tennessee.

Q Are there additional salesmen for the years 1973 and '74?

A Yes.

Q Who would that be?

A Des Mooney. I am not sure of the correct address. I think it was Montreal, Canada. Doug DuVall, Springfield, Massachusetts. Robert Hance, Columbus, Ohio; Mike Dunn, Bloomburg, Pennsylvania; Clyde Slabaugh. That is complicated story: He was being transferred from Indiana to Pennsylvania to assume a sales engineer's job, and it didn't work out because of the salary. So I can't give

1 you a location for him. Steve Williams, his last address
2 was Lancaster, Pennsylvania, and I think that encompasses
3 all of the salesmen during that period of time.

4 MR. TULCHIN: I don't think it's necessary
5 for me to say that this carries over from the first
6 deposition. You have our objection to this period
7 of time. The objection is carrying through all the
8 way.

9 MR. LUSTIGMAN: Your objection is noted. As
10 I stated before, I feel that the period of time of
11 the transactions in question and of the institution
12 of litigation are certainly relevant.

13 MR. TULCHIN: I want the objection noted.

14 MR. LUSTIGMAN: It's noted.

15 Q You mentioned the names of three salesmen who
16 currently supervise and additionally the names of others
17 whom you supervised in 1973 and 1974. I take it, would
18 that be a total of nine different individuals that were
19 salesmen for the company or did the three current ones
20 have they replaced the others?

21 A In effect, the three current ones have replaced some
22 or portions of the previous ones who are no longer with us.
23 I missed one, Earl Miller, Greensboro, North Carolina.

24 Q Now, during the period of 1973 to date, can
25

1 you specify, please, which sales personnel covered the
2 State of New York?

3 A Doug DuVall.

4 Q So, during the period of 1973 or 1974, was
5 Mr. DuVall covered the New York area?

6 A Yes.

7 Q And during that period of time, did anyone
8 else cover the New York area?

9 A No.

10 Q Currently, who covered the New York area?

11 A I do.

12 Q Anyone else?

13 A No.

14 Q How long have you been covering the New York
15 area?

16 A Since I dismissed DuVall, which has been, I guess,
17 at least a year.

18 Q Do you have any figures available of the total
19 sales of the eight products which you mentioned, on an
20 annual basis in the State of New York?

21 A Yes, not on an annual basis. I can give it to you
22 for the first six months.

23 Q Of 1975?

24 MR. TULCHIN: Philips' fiscal year, 1975.

25 A This would be the fiscal '75, right, which is April

1 to September.

2 Q All right.

3 A Approximately nine hundred thousand dollars.

4 Q Do you have any figures available of the sales
5 for the 1974 fiscal year?

6 A No.

7 Q Prior to coming here to testify, did you make
8 any attempt to ascertain that information?

9 A No.

10 Q Prior to coming here to testify, did you dis-
11 cuss the testimony with anyone other than with counsel?

12 A No.

13 Q Did you check any of the corporate records
14 prior to coming here to ascertain any information about
15 sales and marketing in New York by your company?

16 A Well, yes, I had to check, otherwise I wouldn't
17 have that figure.

18 Q What did you check for that figure?

19 A I checked the computer leave-outs and I basically
20 called our marketing department.

21 Q Did you ask them only for the last six-month
22 figure?

23 A Yes.

24 Q How did you decide to limit your inquiry to
25

1 the last six months?

2 A I was under the impression what was relevant was
3 what we are currently doing businesswise, and whatever
4 word business means in the State of New York.

5 Q To your knowledge, Mr. Hornberger, were these
6 sales figures roughly equivalent to the 1974 figures?
7 Do you have any knowledge of that?

8 A I can only hazard a guess.

9 Q What basis would you hazard a guess on?

10 A I would say they are probably higher in 1974.

11 Q Higher now?

12 A What I gave you now was probably higher in 1974.

13 Q Would it be fair to state that of the figures
14 you gave of the nine hundred thousand dollars for the last
15 six months that the preceding six months would be roughly
16 the same?

17 A No.

18 Q What would the facts be?

19 A It would probably be less for the preceding six
20 months.

21 Q Do you have an idea how much less?

22 A No.

23 Q Do you have any records that would indicate
24 the sales figures of your division for the year 1973 to
25 1974?

1 A There is one thing about the mobile home or of the
2 industry. It's very seasonal. The months through April,
3 September are generally better months and higher months
4 dollarwise than the remaining six months.

5 Q Do you have any records available in your com-
6 pany as to the sales of these products for the years 1973
7 and 1974?

8 A Yes.

9 Q Are these records readily available to deter-
10 mine such sales for the State of New York?

11 MR. TULCHIN: Can I have a clarification as to
12 what you mean by sales for the State of New York?

13 MR. LUSTIGMAN: Sales for the State of New
14 York.

15 MR. TULCHIN: Sales by Philips? Philips has
16 no facility within New York, so let's clarify what
17 you mean by bases in New York.

18 Q Sales to customers located in the State of
19 New York.

20 A Well, if you are going to pick up that threat for
21 clarification, basically what I am talking about in dollar
22 volume, sales is what he wanted to clarify. These pro-
23 ducts are dollar volume and it is basically sold to a
24 firm in Dryden, Michigan. The headquarters approve the
25 purchase of these products. They pay the invoice for

1 the product, the goods are sent to the account in the
2 State of New York for approval having indicated they re-
3 ceived them.

4 Q Do these goods wind up in the State of New
5 York?

6 A Yes.

7 Q And that's approximately nine hundred thousand
8 dollars for the last six months?

9 A Yes.

10 Q Now, do you or do any of the -- are you the
11 only one who visits accounts in the State of New York?

12 A Within my division, yes.

13 Q Prior to yourself, it was just Mr. DuVall?

14 A Yes.

15 Q Now, how many accounts who are located in the
16 State of New York, do you have?

17 A Principally three -- make that four.

18 Q Four principal accounts? And are these re-
19 gional equipment manufacturers?

20 A Yes.

21 Q These are the manufacturers to whom you sell
22 the component parts?

23 A Yes.

24 Q In addition to these four principal accounts,
25 who else? How many other accounts does your division

1 have in the State of New York?

2 A I can only hazard a guess, ten, twelve. In fact,
3 that's probably high.

4 Q Do you have any record that would indicate
5 the identity of the accounts located in the State of
6 New York?

7 A Yes.

8 Q Do you have such records available here?

9 A No.

10 Q How often do you come to the State of New York?

11 MR. TULCHIN: Assuming this his own business.

12 Q On business.

13 A Well, Doug DuVall is covering New England. I made
14 two trips to travel with him. Since Doug DuVall is no
15 longer with us, I have been covering basically the entire
16 area myself. I have made two trips. Now, that is not
17 with the intention of calling solely on the accounts in
18 New York. I will go through New York and call on accounts
19 and go through Connecticut and New Hampshire and Vermont
20 and Maine.

21 Q But you made, in the last year or two, at
22 least four trips in New York?

23 A Yes.

24 Q In addition to your trips to New York to sell
25 the various --

1 MR. TULCHIN: I don't think that w.
2 mony. He said he made trips to New York, .
3 trips he may have been passing through New Yc
4 am not sure he made four trips to New York, for the
5 purpose of selling any products.

6 Q On your trips to New York, did you come here
7 for the purpose of selling products?

8 A No.

9 Q Well, what did you come here for?

10 A I briefly noted the principal accounts. Purchasing
11 is controlled at other locations, and my function would
12 be primarily of that as ambassador to see that everything
13 is going correctly.

14 Q You come to New York to visit the place where
15 the goods are delivered and to chat with the corporate
16 personnel of these customers, as a good will gesture?

17 A Yes.

18 Q Would you take any physical orders while you
19 were here?

20 A No.

21 Q Other than these regional equipment manu-
22 facturers, does your division deal with other accounts,
23 other types of accounts?

24 A No.

25 Q Other than direct sales that are made to these

1 regional equipment manufacturers, do you deal through any
2 other manufacturers' representatives or agents?

3 A No.

4 Q In other words, all sales are solely through
5 your division headquarters?

6 A Yes.

7 Q You don't sell to any other representatives
8 or agents?

9 A No.

10 Q And is the same true for the years 1973 and
11 1974?

12 A Yes.

13 Q Do you sell any other products to anyone other
14 than the regional equipment manufacturers, such as chain
15 stores?

16 A No.

17 Q Had you made such sales for the years 1973 and
18 1974?

19 A No.

20 Q So that you don't sell, for example, water
21 heaters or windows to Sears Roebuck or anyone like that?

22 A No.

23 Q Do you sell these products to any dealers in
24 replacement equipment?

25 A Yes.

1 Q And are any of these dealers located or h
2 offices in the State of New York?

3 A Yes.

4 Q How many of those are there?

5 A I have no idea.

6 Q Do you have any records that would reflect that?

7 A Yes.

8 Q Do you ship these products, these replacement
9 products into the State of New York to such dealers?

10 A Yes.

11 Q Do you have any figures available as to the
12 dollar volume of such replacement business?

13 A No.

14 Q Are there records in the corporation that would
15 reflect such dollar volume?

16 A That I am not sure of. I imagine there are, but our
17 principal thrust is to manufacture it and the after-market
18 has been of little consequence. I imagine there are figures
19 where I can go and get them.

20 Q These figures would be in addition to the
21 approximately nine hundred thousand dollars sales volume
22 that you mentioned before for the last six months?

23 A Yes.

24 Q Other than the regional equipment manufacturers
25 and after-market of the placement parts, are there any

1 other types of accounts that your division sells to?

2 A No.

3 Q Do you have anything to do with the manufactur-
4 ing of any of these products?

5 A No.

6 Q Do you have any knowledge --

7 MR. TULCHIN: Let me go back and clarify that.
8 When you say you met that personally --

9 MR. LUSTIGMAN: Yes.

10 MR. TULCHIN: That's been used interchangeably
11 with the division.

12 Q Do you have any knowledge as to where the raw
13 materials are used to manufacture the eight products that
14 you mentioned are purchased from?

15 A No.

16 Q Who would be the knowledgeable individual in
17 your division that would have such knowledge?

18 A I don't know if there is any one individual. There
19 is none. No one individual that can tell you where the
20 raw materials are purchased for each and every one of
21 these products. I will clarify that.

22 Q Please.

23 A Each product line is manufactured by a different
24 division and, as a result, the person that is in charge
25 of that division in a sense has the responsibility for it.

1 So roofs would be controlled by one individual, axles
2 by another individual, tubs and showers by another. The
3 same for every product line and, again, there is no one
4 person that would have that knowledge.

5 Q Do you keep in touch with any of the New York
6 accounts by telephone?

7 A Yes.

8 Q Do you sell any of these accounts by telephone?

9 A No.

10 Q What is the purpose of your telephone conversa-
11 tions with these accounts?

12 A Well, generally, I briefly state my function as an
13 ambassador to see if everything is going correctly with
14 the product. I have no selling function, as far as those
15 accounts are concerned. Their purchasing is done in
16 other locations. The goods are shipped to a location
17 in New York. They indicate receipt of those goods, the
18 invoice is then transported to the corporate headquarters
19 and paid to the corporate headquarters.

20 Q You mentioned there were ten to twelve other
21 accounts.

22 A I said that nine.

23 Q What are they talking about nine accounts?

24 A I can't give you the truthful answer because I
25 was preparing myself for things of significance, and

1 those four accounts are significant.

2 What else is lying out that might be fifty
3 dollars a year and ---

4 Q It might be several thousand.

5 A No, I don't think so. If these were, I'd probably
6 know of it.

7 Q But you have no knowledge of the dollar
8 volume of those other eight, ten, twelve accounts?

9 A No. I am going to spend my time where it benefits
10 me and I think you are the same way.

11 Q You know I don't mean to argue the point
12 with you, but I am just trying to get the facts as they
13 are.

14 So that your phone calls to these New York
15 accounts are basically good will calls to determine
16 whether everything arrived all right and functioned
17 properly?

18 A Yes.

19 Q Now, in addition to yourself and to Mr.
20 DuVall, do any other corporate personnel, during the time
21 in question, come to New York for other business purposes?

22 MR. TULCHIN: Again we are referring only
23 to this particular division, or are you talking
24 about Philips Industries?

25 Q To whatever is his knowledge.

1 A I only know of one other, Mr. Doolittle, who was
2 previously mentioned.

3 Q Who is Mr. Doolittle?

4 A He is connected with Malta in some way. I don't
5 know if he is the manufacturers' representative. I don't
6 know what his functions are.

7 Q What do you know about his business to New
8 York?

9 A I know nothing about them.

5 10 Q You know he does come here, though?

11 A Well, I am not sure. I think it was previously
12 mentioned in this session he did in fact live in New York,
13 was it not correct?

14 MR. TULCHIN: This relates to the original
15 statement, regarding the first deposition as to the
16 move into New York by Mr. Doolittle.

x 17 Q So there is Mr. Doolittle, and he is the
18 Utica salesman?

19 A Yes.

20 Q And to your knowledge he sells products of
21 the Malta Division?

22 A I only know of Mr. Doolittle, basically the same
23 time. I am not sure what his functions are. I don't
24 know if is a manufacturers' rep or he is a direct em-
25 ployee of Malta, or what his functions are.

1 Q Now, aside from that, are there any corporate
2 personnel, such as engineers, trouble shooters, sales
3 support personnel that come in to New York on business
4 purposes?

5 A No.

6 Q What do you do when there is an engineering
7 problem?

8 A I come.

9 Q And you are technically knowledgeable to
10 solve the various engineering problems?

11 A Yes; I mean I am not an expert on axles, but what
12 problems might develop I am capable of solving, or, ob-
13 viously, I wouldn't be here.

14 Q Now, you were present when Mr. Hinman testi-
15 fied, and I think you recall Mr. Hinman testifying that
16 various other personnel, such as engineers and sales
17 support personnel came to New York from his division, and
18 I was wondering if your division had the same type of --

19 A No, we don't.

20 Q To your knowledge, are there any other cor-
21 porate personnel, other than yourself, Mr. Doolittle,
22 Mr. DuVall, when he was employed with the company, who
23 come to New York for business purposes?

24 A No.

25 Q Just so I am clear, you understand they don't

1 come or you don't know?

2 A There is no one else that comes.

3 Q Do you have any knowledge about any of the
4 other divisions, other than the recreational mobile home
5 division?

6 A Well, with any degree of authority, no.

7 Q What knowledge do you have?

8 A Well, you understand the situation, as far as Mr.
9 Hinman, so you are aware of the Lau Division, correct?

10 Q Yes.

11 A Malta, we have got the name, Mr. Doolittle, so you
12 are aware of two of them as well as I am. Glasgow is the
13 third division, but their primary concentration is con-
14 ventional housing and in addition I sell the products,
15 so I am knowledgeable of, you know, their effort, and
16 I represent the mobile home RV Division, so we have
17 all four of them covered.

18 Q What do you know about Glasgow Sales in
19 New York?

20 A I don't think there are any.

21 Q Did you make any effort to check any records
22 to determine whether or not there were sales in New York?

23 A No, I didn't.

24 Q And are such records available at the cor-
25 poration?

1 A I would imagine so, yes. I will just put a
2 clarification on there. Glasgow, as far as the East
3 Coast market manufacturing measure and co-dealer, lends
4 itself to shipping beyond 150 miles from the location of
5 the plant; so I have personally tried to market, to sell
6 that product in Ohio and in Pennsylvania and I could not
7 be competitive because of the great cost, so I am quite
8 certain there are no Glasgow sales, at least through
9 my division in the State of New York.

10 Q What does the vent line group do?

11 A That's basically a vending equipment, range hoods
12 for use over ranges, stoves, fans, for use in kitchen
13 areas, bathroom fans, ceiling fans, access doors, luggage
14 doors, baggage doors.

15 Q Is your division the one that sells those?

16 A Yes.

17 Q And what about the interior division?

18 A I sell that also.

19 Q You sell that?

20 A Yes, there has been a recent change in our selling
21 philosophy. I am not responsible for that, and it's
22 my area. I didn't give it to you previously, but the
23 point of manufacture is Thomasville, Georgia. Further
24 penetration north we go to Thomasville, to the southern
25 portion of Pennsylvania.

1 Q What does the interior division make?

2 A Bedding furniture.

3 Q Is it your testimony that there are no sales
4 in the interior division in New York?

5 A Yes, it is.

6 Q Is the same true for the years 1973 and 1974?

7 A Yes, it is.

8 Q Have you checked any records to determine
9 the accuracy of that answer?

10 A No, I haven't.

11 Q Prior you said very recently what does that
12 mean? How long have you been responsible for these sales?

13 A I have been in the capacity, the regional manager,
14 I think it's been two years this month.

15 Q How long have you been responsible for the
16 interior?

17 A Oh, I see. I'd say approximately six months.

18 Q Prior to the last six months, do you have
19 any knowledge of the location of the sales in that divi-
20 sion?

21 A Basically, no, but again being familiar with the
22 great cost and shipping we have been talking about a
23 situation that's almost impossible to attempt to manu-
24 facture in Georgia and sell competitively in the State of
25 New York.

1 Q But you don't know whether or not there were
2 sales in New York?

3 A With any degree of authority, no. If you want me
4 to put a percentage on it, I would say ninety percent no.

5 Q Are your products advertised?

6 A At this time I'd say no.

7 Q None of your products are currently adver-
8 tized?

9 A I don't think so.

10 Q Does that come within your realm?

11 A No, it doesn't.

12 Q To your knowledge, for the years 1973 and
13 1974, have these products been advertised?

14 A I think, again, with no degree of authority, but
15 I think during that period of time they were advertised
16 in trade journals.

17 Q Who prepared the advertising?

18 A Well, it would be our advertising department in
19 Dayton, Ohio.

20 Q These were prepared by in-house advertising
21 rather than the use of outside advertising agencies?

22 A The basics would be what they would do with it,
23 whether they would go through an outside agency or not,
24 I don't know.

25 Q Are the trade journals, in which these

1 products were advertised, to your knowledge, distributed
2 in the State of New York?

3 A I would think they were, yes. Generally, I will
4 make a clarification. Our products are sold basically
5 on a one-to-one concept, because it's terribly competi-
6 tive and advertising does not lend itself to our type of
7 sales. But what advertising we have done, I think, has
8 been limited and has been with the intention of making
9 our customers aware of perhaps a recent development in
10 our product line.

11 Q I want to clarify something, Mr. Hornberger,
12 you mentioned the four principal accounts that you have
13 that are in New York and that the billing was done
14 through the corporate headquarters located outside of
15 New York. I take it you shipped directly to these com-
16 panies' locations in the State of New York?

17 A Yes.

18 Q Do you have anything to do with attending any
19 meetings in New York regarding the securities of the com-
20 pany?

21 A No.

22 MR. TULCHIN: To the extent that there might
23 be such meetings. You haven't established that there
24 are. Your question implied that there are such
25 meetings in New York.

1 Q Okay. To your knowledge, do any corporate
2 personnel attend any such security meetings in New York?

3 A I have no knowledge of it, really. It's beyond
4 my realm of responsibility.

5 Q May I see Defendant's Exhibit No. 1 for identifi-
6 cation?

7 (Handing to counsel.)

8 Q Do you have anything to do with the develop-
9 ment of new products?

10 A No.

11 Q Looking at the annual report, I notice there
12 are various distribution centers. Do these distribution
13 centers distribute to all of the companies' products or
14 are they limited only the products of certain divisions?

15 A I would say each location is probably different from
16 the next. I don't think there is any rule of thumb by
17 which they go. We are saying this distribution will
18 handle ten products and this will also handle ten. It's
19 entirely up to the region.

20 Q Who would be the knowledgeable individuals
21 on your division who would know about purchases of raw
22 material and other components and equipment that are used
23 by your division in manufacturing the products that you
24 listed?

25 A Again, there is no one person.

1 Q You mentioned that for each of the nine pro-
2 ducts there were probably nine people.

3 A Well -

4 Q There would be one person?

5 A Basically, yes. I can't offhand tell you who they
6 are.

7 Q You have no knowledge whatsoever where raw
8 materials are purchased?

9 A No, it's not my function.

10 Q Nor do you know who was in charge of such
11 information?

12 A No.

13 Q Do you know whether any other individuals
14 come to New York for purchasing raw materials?

15 A No, I don't.

16 MR. LUSTIGMAN: Thank you very much.

17 EXAMINATION BY

18 MR. TULCHIN:

19 Q I just have a few questions. Mr. Hornberger,
20 of the distribution centers that were referred to earlier,
21 in the questioning of the direct examination, are any
22 of those centers located within New York?

23 A No.

24 Q Are any of the manufacturing facilities of
25 Philips located in New York?

A No. 161a

Q Now, as to your division and if you know, as to any other divisions, are there any officers of Philips within the State of New York?

A No.

Q In the period of, generally, from 1973 up to the present, the periods that have been referred to before, do you have any knowledge, as to, roughly, the number of employees of Philips Industries in a general range?

A You mean total employees?

Q Total of employees of Philips Industries.

A Well, I think during the period of time, like starting from '73, it might have been in the neighborhood of seven thousand. Now I think it is down around three thousand thirty-five hundred.

Q Okay. And have that number, your division has not had any employee within the New York, just confining it to your division, who resided within the State of New York?

A No.

Q In the beginning of Mr. Lustigman's questions, he asked you whether New York was within the realm of your territory. I want to clarify what your territory is. Can you give me all the states and whatever is included

in your territory? 162a

1 A I have the Provinces of Quebec and the Maritimes,
2 all of New England; Vermont, New Hampshire, Maine,
3 Connecticut, Rhode Island, New York, Pennsylvania, New
4 Jersey, Delaware, Virginia, West Virginia, North and
5 South Carolina.

6 Q Directing your attention to the four prin-
7 cipal accounts of your division that are located within
8 New York that you referred to earlier, are they part of
9 one -- are the four of them separate corporations or to
10 what extent are they part of the same corporation?

11 A There are four out of forty-nine plants.

12 Q Of one corporation?

13 A One corporation owns forty-nine plants around the
14 country. These four are located in New York, but as I
15 previously said I'd like to sell them but I can't -- I
16 mean their purchasing is controlled out of another loca-
17 tion.

18 Q What is that location?

19 A Michigan. The purchasing is controlled out of
20 their invoices, and they go to the New York location
21 simply for verification as having received the material
22 and then the invoices are paid out of Michigan.

23 Q What are the total sales of the mobile home
24 RV division? Let's talk about for the year ending March
25

163a

1 31, 1974 and March 31, 1975, just roughly?

2 A Well, the only one I am really familiar with right
3 now are past fiscal year, which would be '75 ending this
4 past March. I think it was eighty-three million or some-
5 thing like that.

6 Q Do you know what the total sales of Philips
7 Industries were for that same period?

8 A I believe it was in the nature of 177 million,
9 somewhere in that bracket.

10 MR. TULCHIN: I have no further questions.

11 BY MR. LUSTIGMAN:

12 Q Do you know what the sales in New York were
13 for those years?

14 A No, as I previously mentioned, the only approxi-
15 mation or knowledge that I can give you is the past six
16 months.

17 Q In other words, you are claiming figures of
18 a total sales for those periods, but not for the New York
19 sales?

20 A I didn't obtain that. I knew that I wouldn't have
21 known what are the sales for New York State, had it not
22 been the fact that that was the subject of this discussion.

23 MR. LUSTIGMAN: Thank you very much.

24

25

I have no further questions.

(Whereupon, at 1:30 P.M., the examination
was concluded.)

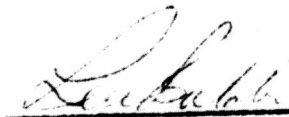
Subscribed and sworn to before me

this _____ day of _____ 1975

165a

1
2 I, LEWIS BALABAN, of 140 Nassau Street,
3 New York, N.Y., do hereby certify that the
4 within deposition, given by JIM HORNBERGER,
5 which was taken before me on December 9, 1975,
6 at the offices of Sullivan & Cronwell, Esqs.,
7 48 Wall Street, New York, N.Y., was reported
8 stenographically by me and reduced to typewrit-
9 ing under my supervision and I certify that the
10 said deposition is a true record of the testimony
11 given by the witness therein.

12 I further certify that I am not an attorney
13 associated with or an employee of any attorney
14 for the parties in said action and have no in-
15 terest whatsoever in the above, nor have I any
16 consanguinity or affinity to any of the parties
17 in this action.
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DEPOSITION OF RUBEN POLNE, SALES MANAGER OF FRAMEN
STEEL SUPPLY COMPANY, INC. DATED APRIL 29, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
FRAMEN STEEL SUPPLY COMPANY, INC.,
:
Plaintiff,
:
-against-
:
PHILIPS INDUSTRIES, INC.,
:
Defendant.
:
-----X

DEPOSITION of RUBEN POLNE, taken before
Nathan Borak, C.S.R., Notary Public of the
State of New York, held at the offices of
Sullivan & Cromwell, Esqs., 48 Wall Street,
New York, New York, on the 29th day of April,
1976, at 10:00 A.M., pursuant to notice and
order.

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A P P E A R A N C E S :

3

NB:jd
5/5/76

4

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9

48 Wall Street
New York, New York

10

BY: DAVID B. TULCHIN, ESQ.,
of Counsel

11

12

* * *

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IT IS HEREBY STIPULATED AND AGREED by
and between the attorneys for the respective
parties hereto that filing, sealing and
certification be and the same are hereby
waived.

IT IS FURTHER STIPULATED AND AGREED that
all objections, except as to the form of the
question, shall be reserved to the time of
the trial.

IT IS FURTHER STIPULATED AND AGREED that
the within examination may be subscribed and
sworn to before any Notary Public with the

1
2 same force and effect as though subscribed
3 and sworn to before the court.
4

5 * * *

6
7 R U B E N P O L N E, having been first
8 duly sworn by the Notary Public, was examined
9 and testified as follows:

10 EXAMINATION

11 BY MR. TULCHIN:

12 Q Will you state your name, please?

13 A Ruben Polne.

14 Q Where do you reside?

15 A 266 Park Avenue, Park Ridge, New Jersey, 07656.

16 Q Mr. Polne, are you employed with the
17 plaintiff here, Framen Steel Supply Company?

18 A Yes.

19 Q What is your position with Framen?

20 A Sales manager.

21 Q Any other titles? Any other positions?

22 A I am in purchasing, too. I do purchasing, I do
23 sales, credit checks.

24 Q Any other functions at the company?

25 A Most functions that would be expected of somebody

1

2

else in a company of our size.

3

Q Let's get into that. How large is

4

the company? How many employees are there?

5

A Framen Steel has four employees.

6

Q Are you an officer of the company?

7

A No.

8

Q Who are the officers?

9

A Mr. Frank Mendal. He is the president. And

10

I really do not know whether there are any officers

11

in the legal term other than him. I think we have an

12

accountant who might be.

13

Q Is the accountant an outside accountant?

14

A He is an inside accountant.

15

Q He has an office?

16

A He comes into our office.

17

Q What is his name?

18

A Mr. Mendelsohn, Irving Mendelsohn. But again

19

I do not know whether is he a legal officer.

20

Q Who are the directors of the Framen

21

Steel Supply Company?

22

A The directors, I would say, Mr. Mendelsohn

23

would be one.

24

Q Do you know or are you guessing?

25

A I would guess. I really don't know for sure.

1

2 It has not been --

3 Q Are you a stockholder in the company?

4 A No.

5 Q Do you know who holds the stock?

6 A Mr. Mendal.

7 Q One hundred percent?

8 A One hundred percent.

9 Q You have said that you are in sales and
10 purchasing and credit checks. Would you describe your
11 function as managerial? Do you consider yourself a
12 managerial employee?

13 A Yes.

14 Q Who is your direct superior in the
15 company?

16 A Mr. Mendal.

17 Q You report directly to him?

18 A Yes.

19 Q How about the other employees, other than
20 yourself; what are their functions and duties?

21 A Secretarial.

22 Q Are you the only employee other than
23 secretarial and clerical people?

24 A That is right.

25 Q So that in the managerial positions there

1

2 is Mr. Mendal, yourself and maybe you will include --

3 A Two young ladies.

4 Q What are their functions?

5 A Secretarial.

6 Q They are not managerial?

7 A Secretarial.

8 Q So that the managerial functions of
9 the company are carried out exclusively by yourself
10 and Mr. Mendal.

11 Do you know if Mr. Mendal is on the
12 board of directors of any other company or is a share-
13 holder of any other company that deals in a similar
14 line of business?

15 A I don't know. I don't believe so.

16 Q Does he have any interest whatsoever
17 in any of the suppliers you deal with, such as, Okaya?

18 A No. Definitely no.

19 MR. LUSTIGMAN: I am going to give you
20 some leeway over here but, again, I would just
21 like to state for the record that the purpose
22 of this deposition is supposed to be limited
23 to the scope of the jurisdiction.

24 MR. TULCHIN: Absolutely.

25 MR. LUSTIGMAN: It seems that these

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questions may be going beyond it. I would
just like to mention that.

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MR. TULCHIN: The question of jurisdiction
under Section 302 in line with the argument
that Framen has made relates to the whole
question of agencies. You have made the
argument that you were acting as agent in
New York for us and I think my questions are
throughout going to go to that overall broad
question.

12

13

14

15

16

MR. LUSTIGMAN: Fine. Whether or not
the president of the company has stockholding
interest or any other interests in any other
company, I fail to see how that would apply.

17

18

BY MR. TULCHIN:

19

20

Q Do you know when Framen Steel Supply
Company was first chartered?

21

A I believe in 1948.

22

Q Is it now a New York corporation?

23

A It is a New York corporation.

24

Q Has it been since 1948?

25

A I think since its inception. It has been a

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New York corporation since its inception.

Q Directing your attention now to the latter part of 1974, were there then four employees of the company as there are now? By that I have included two secretaries, yourself and Mr. Mendal.

A And the accountant. Yes.

Q The same number of employees?

A Yes.

Q Does Framen have any subsidiaries, any divisions?

A No. Framen is an entity unto itself.

Q I am not sure this is on the record. Where are your offices located?

A One World Trade Center.

Q What floor?

A Forty-sixth floor, Suite 4667.

Q Does Framen have any property in New York?

A No.

Q What would you say, just as a round figure, are your annual billings? Take the past couple of fiscal years, whatever your year may be.

A I would think in the vicinity between three to five million dollars.

Q What is the fiscal year of Framen Steel

1

2 Supply Company?

3 A March 31, 19 -- March 31 of the year.

4 Q In the fiscal year which ended March 31,
5 1975 you would say your billings were in the range of
6 three to five million in that year?

7 A Approximately.

8 Q How many customers would you say generally
9 Framen Steel has?

10 A Over one hundred.

11 Q Are these regular customers that come
12 to you on a regular basis?

13 A Yes.

14 Q Is the business of Framen Steel exclusively
15 to order, shall we say, steel from overseas and
16 import it into the United States for resale to other
17 companies?18 A We act as agents for companies who require
19 that service.20 Q You use the word "agent," I am not sure
21 you use that in a legal sense. What do you mean by
22 the word?23 A We are approached by users, such as Philips,
24 to supply them with steel.

25 Q Later we will get into exactly how that

1
2 happens and whether you are an agent or not. And
3 that is something that will be decided by others.

4 Have you seen any financial statements
5 of Framen Steel Supply Company for the last fiscal
6 year?

7 A I may have.

8 Q Are you familiar with what the profit
9 may have been for Framen Steel Supply Company?

10 MR. LUSTIGMAN: Objection.

11 Q I just asked him whether he is familiar.

12 A Really I am not. It does not necessarily interest
13 me.

14 Q You are not interested in whether you
15 make a profit or not?

16 A It is not part of my function, you know, to
17 check that out.

18 Q Are you concerned with running a
19 profitable company?

20 A Of course.

21 Q You are?

22 A Naturally.

23 Q In that connection are you aware of
24 prices when you either deal with your customers or
25 deal with your suppliers? Are you aware of the prices

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being charged you and prices you are charging?

A Yes.

Q You are?

A Yes, I am.

Q Is that a major factor in your dealings
with these companies?

A Price?

Q Yes.

A In terms of the customers?

Q From either end.

A Of course. It is a major factor.

Q Doesn't Framen Steel in effect make
money solely through the spread between the price they
are paying and the price at which they are reselling
the product?

A That is correct.

Q Are you generally familiar with the course
of dealings between Framen Steel Supply Company and
Philips Industries, the defendant here?

A Yes, I am.

Q Did you personally handle the transactions
between those two parties?

A Yes, I did.

Q And that would be on every occasion in

1

2

which those transactions came up?

3

A Yes, every occasion. That is right.

4

Q Before coming here today, Mr. Polne,

5

did you discuss your testimony with anyone?

6

A No.

7

Q You did not discuss with your lawyer

8

what you might be asked and what your testimony might be?

9

A Only in terms of the jurisdictional part of

10

it. In other words, as to what the general questioning

11

would be. But I did not discuss the case because the

12

case, as far as I am concerned, is clear-cut.

13

Q I am not asking you whether the case is

14

clear-cut or not. I am asking you whether you discussed

15

with anyone, either in the company or the attorney,

16

what questions you might be asked and what your testimony

17

might relate to?

18

A No, I did not.

19

Q You did not?

20

A No.

21

Q You say Framen Steel has over one hundred

22

regular customers?

23

A Yes.

24

Q Where are these customers located?

25

A I would say all over, really. But mostly in the

1

2

Gulf and on the East Coast.

3

Q When you say the Gulf, you mean the

4

Gulf of Mexico area?

5

A Yes, that is right. In other words, Houston,

6

New Orleans and also on the East Coast.

7

Q Let's first find out how you get contact

8

with these companies. Who makes contact with whom,

9

in general, in your dealings with your customers?

10

A In general, we make contact with them initially.

11

Q How is that done? Do you have a salesman?

12

A We have sales representation, we have agents.

13

Q Who are those people? Are they employees?

14

A They are not employees. They deal with us on

15

a commission basis.

16

Q Who are they? Can you identify them

17

for me, their names?

18

A Well, there is Jim Wilson Associates in

19

Houston; Wayne Tasker in Amarillo, Texas.

20

Q Are those your only sales representatives?

21

A Those are the ones that we use in those areas, yes.

22

Q How about in New York?

23

A No, we do it ourselves. We make our calls

24

ourselves.

25

Q So in other words you or Mr. Mendal, I

1

2 would assume --

3 A Yes.

4 Q -- actually go out and visit potential
5 customers, make an appointment with their purchasing
6 agents?

7 A Or we call.

8 Q You call?

9 A Yes.

10 Q From where do you get those name of
11 potential customers?

12 A This business is a very known business, the
13 steel business. Since Mr. Mendal has been in this
14 business for so many years we don't need a Dun &
15 Bradstreet to locate the customers who can use our
16 services or our products.

17 We know the customers who we wish to deal with.

18 Q Generally, the first time contact is
19 made between Framen Steel and a potential customer,
20 that contact is initiated by Framen Steel?

21 A In some cases, yes; in most cases.

22 Q Let's find out what happens next.

23 Assume you go in and either telephone
24 a potential customer or go visit the offices of a
25 potential customer, the purchasing agent or somebody

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else. At that point what is the next step? Do you then hear from the customer or do you continue to make efforts to contact them and have orders placed by them?

A At that point they would indicate to us what they need.

Q How would they indicate that? Through what means?

A By telephone.

Q And they would telephone your offices in the World Trade Center?

A That is right.

Q Turning specifically to your dealings with Philips Industries, how was contact first initiated with Philips Industries?

A A transaction was made in '73 where we had some steel. There was a company called Richland Corporation, if memory serves me right, who pointed us to Philips Industries, and a Mr. Gayle Harvey of Philips Industries contacted us and consummated the transaction.

Q I am not quite clear on that. You had a customer named Richland?

A Yes.

Q And had they ordered some steel from you?

1

2 A Yes, we sold them steel in the past.

3 They are a warehouse in the Dallas area, if
4 I am not mistaken.

5 Q What was the particular transaction
6 that they contacted Philips Industries about? Did
7 they buy steel from you?

8 MR. LUSTIGMAN: Excuse me. Will you
9 clarify that? I think your question is the
10 transaction between Richland and Philips?

11 MR. TULCHIN: I am not sure I understand
12 Mr. Polne's testimony correctly.

13 Q You had some dealings which I would like
14 to find about with Richland.

15 A Yes.

16 Q Did Richland then contact Philips and
17 tell you about that contact or did they simply tell
18 you that a company named Philips Industries might
19 need, say, the steel which they had purchased?

20 MR. LUSTIGMAN: If you know.

21 A They said that they would need the steel which
22 we had, which we had purchased, not that they had
23 purchased.

24 Q You had purchased from whom?

25 A From our suppliers.

1

2

Q How did Richland get into it? Was

3

the steel being stored at their warehouse?

4

A No. Richland had purchased a quantity of

5

steel from us out of a larger quantity and they

6

mentioned to us that Philips Industries might have

7

interest in it.

8

Q

You mean the balance that they had not

9

purchased?

10

A

Yes, that balance that they had not purchased.

11

And then Philips in turn contacted us and we consummated

12

the transaction.

13

Q

I am trying to find out this: You say

14

Philips contacted you?

15

A

Yes.

16

Q

How did Philips know to contact you?

17

Had they spoken to somebody at Richland?

18

A

Yes.

19

Q

The person at Philips who contacted you

20

was Mr. Harvey?

21

A

Yes, Mr. Gayle Harvey.

22

Q

What division of Philips was he working

23

with?

24

A

It is difficult to say. Telephone numbers --

25

I really don't know in what town. He may have been

1

2

in Indiana City. I really don't know.

3

4

Q As a result of that telephone call what then happened?

5

6

A We agreed upon terms and the steel was shipped to them.

7

8

9

Q When you say "agreed upon terms," do you mean in your discussion on the telephone you agreed as to price, etcetera?

10

11

A As to price and terms, right.

12

13

Q What do you mean by terms? What else?

A We gave them net thirty days, that they had thirty days to pay.

14

15

Q Did they thereafter send you an order, a purchase order?

16

17

A Yes, a purchase order.

18

19

Q They did?

20

21

A Yes.

22

23

Q I assume that transaction went forward?

24

25

A That is how all the transactions transpired after that; initiated by telephone and an order followed in writing.

Q Going back to that first transaction, where was that steel located at the time you spoke to Mr. Harvey?

1

2 A In Houston.

3 Q Was Philips made aware of that? Did

4 they realize that?

5 A Yes.

6 Q How was the steel shipped from Houston
7 to wherever it was going, to Philips' plant someplace?

8 A I could be wrong, but I think it went to
9 Arlington, Texas. And it went by truck.

10 Q Who made the arrangement to carry out
11 that transportation of steel? Was it you?

12 A I believe we made the arrangements to deliver
13 the steel. However, it could have been on a freight
14 collect basis, I am not sure. I can't remember.

15 Q At the point in which the steel was
16 being warehoused, I assume, in Houston, who was the
17 owner of the steel?

18 A We.

19 Q You then sold that steel to Philips
20 pursuant to a contract, I assume?

21 A Pursuant to a verbal order.

22 Q Did you consider that there had been a
23 contract by which that sale had been carried out?

24 A A verbal order in the steel business is just
25 like in the brokerage business. Of course, you have

1
2 to know who you are dealing with and Philips Industries
3 is a company which was highly rated. And we expected
4 them to fulfill their commitment to us.

5 Q You received -- after that first
6 telephone conversation in which you agreed to the
7 price and terms for payment, you then received a
8 written purchase order from Philips Industries?

9 A Yes.

10 Q Did you look at that purchase order?

11 A No.

12 Q You didn't look at it at all?

13 A Just to verify that the price was correct.

14 Q Did you look at the back of that purchase
15 order?

16 A No.

17 Q You did not?

18 A No.

19 Q You thereafter shipped the steel to
20 Philips pursuant to their purchase order without
21 knowing what was contained in the purchase order?

22 A Not the back.

23 Q How about the front?

24 A It seems that we are going off on a tangent.

25 The steel involved was very basic. There was a

1
2 gauge steel which was thirty-six inches wide, as I
3 can recall, sitting in a warehouse which we controlled.
4 If there was going to be a rejection of the steel it
5 was only from Houston to Arlington and that would have
6 cost us, at worst, the trucking there and back.

7 Q You were also getting a purchaser for
8 the steel, were you not?

9 A You are saying to me, as I understand it, did
10 I have a contract with them, with Philips? Again, I
11 explain to you that if I shipped the first truckload
12 and Philips rejected it or refused it for whatever
13 reasons, we would have been out the trucking, the
14 movement of the steel from one place to the other and
15 back, and not to be out thousands of tons of steel
16 specifically manufactured to their size.

17 Q You would have been out the trucking;
18 the trucking would have been an expense that you would
19 have borne, Framen Steel; is that right?

20 A Yes.

21 Q Had Philips rejected the steel and had
22 the steel then been returned to the warehouse, who
23 would have been the owner of the steel at that point?

24 MR. LUSTIGMAN: Objection. It calls
25 for a legal conclusion.

1

Polne

22

2

Q Who would you have considered to be

3

the owner? You said while the steel was sitting in

4

the warehouse, before the telephone conversation

5

with Philips, you were the owner. And had Philips

6

rejected that steel and it had been returned to the

7

warehouse, what would you have considered?

8

MR. LUSTIGMAN: Objection. It calls

9

for a legal conclusion, first of all; and

10

second of all, it has nothing to do with the

11

jurisdictional questions at issue here.

12

MR. TULCHIN: I disagree. I think it

13

has a lot to do with the jurisdictional

14

questions.

15

Are you directing him not to answer?

16

MR. LUSTIGMAN: Answer the question.

17

A Will you repeat it?

18

Q The question is: Had you shipped the

19

steel to Philips and had Philips then rejected the

20

steel and the truck turned around and returned to

21

Houston and the steel would be put back into the

22

warehouse, would you have considered at that point

23

that Framen Steel was still the owner of that steel?

24

A No. If it was sold to them and we did receive

25

the order for the steel, I would consider it to be their

1

2

steel and I would want to know why the steel was

3

rejected.

4

Q Didn't you testify just a minute ago

5

that Framen Steel Supply Company would have borne

6

the expenses for the transportation?

7

A Back and forth, that is correct, because we

8

arranged for the steel to be shipped.

9

Q If the steel was no longer yours?

10

A In other words --

11

MR. LUSTIGMAN: I think --

12

MR. TULCHIN: Let the witness finish

13

his answer.

14

MR. LUSTIGMAN: You are getting a little

15

bit argumentative and very much off the track.

16

May I suggest that at least you rephrase your

17

question because I think it is argumentative.

18

MR. TULCHIN: Okay.

19

Q On what basis would you say that Framen

20

Steel Supply Company would have borne the expenses

21

of the transportation of the steel?

22

A Because we would have made the arrangements to

23

ship the steel and we would be responsible to the

24

trucking company.

25

Q In dealing with your hundred or more

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4

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customers who deal with you on a regular basis, I believe you testified before most of the times these dealings take place as the result of telephone conversations?

A That is correct.

Q As with your conversation with Mr. Harvey of Philips initially, do you receive a call and discuss price and terms for the sale of steel?

A Yes.

Q Thereafter do you normally receive a purchase order from whatever company happens to be involved?

A Yes.

Q Do you look at those purchase orders?

A Only to make sure that the prices are correct.

Q Do you ever read the writing other than the numbers; the numbers may be the price? Do you ever read the writing on the purchase orders?

A No.

Q You never do?

A No.

Q You are never concerned with what one of those companies may be asking you to do in accordance with their order?

1

2 A It never came up before. This is the first
3 time this ever happened, that we had a cancellation
4 of this type. And we never needed to look at the
5 back of the forms.

6

Q Normally when one of these companies
7 places an order with you, what then is the next step
8 that you take? What is your procedure?

9

A Are you talking about specifics now?

10

Q I am not talking about specifics.

11

A Generally --

12

Q Wait just a minute. I want to find out
13 in general. Let me rephrase the question. I don't
14 think it calls for a very difficult answer.

15

The question is: After receiving a
16 telephone call or a purchase order in which one of
17 your customers is asking you to sell them a certain
18 amount of steel and gives you the specifications,
19 etcetera, what do you then do?

20

A We call our suppliers.

21

Q How many suppliers do you have?

22

A At the present time we have limitless suppliers,
23 actually.

24

Q How many deal with you on a regular basis?

25

A I would say two to three.

1

2

Q What are the names of those suppliers?

3

A

Okaya is one; Kanematsu-Gosho.

4

Q The third one?

5

A

Gollin Corporation in New Zealand.

6

Q Does Gollin have any offices in the

7

United States?

8

A

They used to.

9

Q You deal directly with an office in

10

New Zealand when you get your steel from Gollin?

11

A

Originally, yes.

12

Q Would you explain that "originally"?

13

I don't follow that.

14

A

We would deal with them in New Zealand but they

15

did open an office in New York in 1973.

16

Q

Is that office still open in New York?

17

A

I don't know. We have not dealt with them in more

18

than two years.

19

Q

Your primary suppliers are the two

20

companies?

21

A

Yes, the two Japanese companies.

22

Q

Kanematsu-Gosho, do they have an office

23

in New York?

24

A

Yes, they do.

25

Q

And how about Okaya?

1

2 A Yes, they do.

3 Q Okaya -- let's get the proper name.

4 Is that Okaya (U.S.A.) Inc.?

5 A Yes.

6 Q Where are their offices?

7 A One World Trade Center.

8 Q The same building?

9 A Yes, exactly.

10 Q What floor?

11 A The 20th floor.

12 Q How about Kanematsu-Gosho?

13 A The same building, on the 48th floor.

14 Q Do you know in what state Okaya (U.S.A.)

15 is incorporated? Or is it a foreign corporation?

16 MR. LUSTIGMAN: If you know.

17 A I don't know.

18 Q How about Kanematsu-Gosho, are they

19 incorporated in New York?

20 A I don't know.

21 Q In the offices of Okaya in the World

22 Trade Center, how many employees are there, if you know?

23 Just roughly.

24 A I would say fifteen, between fifteen and twenty

25 people.

1

2

3

4

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25

Q Is there one particular person over there with whom you deal on a regular basis in getting your steel?

A Yes. There was more than one I used to deal with but the gentleman that I used to deal with is no longer there. And now there is a Mr. Tanaka with whom we deal.

Q How about in the latter part of 1974, was it Mr. Tanaka with whom you dealt?

A No, a Mr. Satin. He was the sales manager of Okaya at the time.

Q Is there one person at Kanematsu-Gosho with whom you deal?

A Yes, Mr. Milton Stark.

Q In your dealings with one of these two suppliers, and I gather these are the primary two suppliers with whom you deal, would you call both of them, after receiving an order from a customer, and attempt to buy that steel which has been ordered from you from them?

A I would say yes.

Q So normally --

A Normally.

Q Normally you call both of them?

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2

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4

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24

25

A I think it would be good to underline the word "normally." At the point which we are talking about, when Philips did order --

Q I am talking about just in general.

A In general, I would contact more than them, if I could.

Q How many more?

A Depending on what the price needed would be.

If we can get the order we would contact our European agents. We have people in Europe. We don't deal with them on a day-to-day basis, but if we do have an inquiry that would necessitate -- if, for instance, the Japanese were not able to offer the item, we would go elsewhere. And our scope is limitless.

Q If I understand you correctly, normally what you do in attempting to secure the steel is call more than one and sometimes many more than one potential supplier and determine from them if they will sell you that steel and at what price?

A Normally.

Q Would it be the normal practice, then, for you to compare prices that had been quoted to you by potential suppliers on the steel which you seek from them, assuming that they can deliver that

1
2 steel?

3 A Yes, I would compare the prices. That is why
4 I would go to more than one.

5 Q Normally would you not select that
6 potential supplier that quoted the lowest price
7 to you?

8 A Yes, normally I would.

9 Q In dealing with your customers, the
10 one hundred or so that you have, do you disclose to
11 those customers with whom you are dealing, whether
12 it be Okaya or Kanematsu or anyone else; do they
13 know your suppliers?

14 A Only if the customer would like to know. We
15 don't have any secrets.

16 Q Normally you do not, as a matter of
17 course, say to your customer, "I am getting this
18 steel through so-and-so"?

19 A Not normally.

20 Q If you did disclose to them, perhaps
21 they might ask you -- or for some other reason have
22 you ever had an occasion where the customer said, "I
23 would rather you did not deal with Okaya, I would
24 rather you dealt with some other company"?

25 A No.

1

2

3

4

5

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25

Q If that had been said to you at any time, would that have made any difference to you?

MR. LUSTIGMAN: Objection.

Q On what basis, then, do you, in seeking your supplier, on what basis do you decide with whom to deal, when you say there is a limitless number of suppliers?

A Availability of the item and price.

Q And the decision with whom to deal with is made by you personally?

A Most of the time.

Q No one else tells you who to go with?

A I would ask some of my suppliers, they might direct me to people who might be able to.

Q No one instructs you whom to go to. You may get advice, but no one instructs you?

A No.

Q In going to your suppliers and placing an order with them do you disclose to them who your customer is?

A No, not as a normal situation.

Q So that when you place an order with Okaya, say, they don't know who your customer is?

A Normally not.

1

2 Q Do they have any interest, would they
3 normally care about who your customer is?

4 A Normally not. But, again, there are times when
5 they might have interest.

6 Q Do you remember any such times ever
7 occurring?

8 A The time that does occur to me is the order
9 that we placed for Philips. We placed an over-two
10 thousand order of specifically cut steel, specifically
11 ordered to fit machine parts in the Philips plant
12 in Nicholasville, Kentucky.

13 At that point they did want to know who the
14 customer was because of the large order.

15 Q After placing an order with one of
16 your supplier, what is the next communication that
17 normally occurs between Framen and its supplier?

18 A The supplier would then confirm the order to us.

19 Q How would that be done? Through a
20 written piece of paper?

21 A Normally through a writing.

22 Q Did you pay any attention to those
23 writings? Did you check out what was contained therein?

24 A I would say yes, the front part, yes.

25 Q Is there a back part?

1

2 A Maybe there is, maybe there isn't. I know I
3 order steel at a certain price and as long as the
4 terms are listed where they are supposed to be, and
5 that is on the front of the form, we file it until we
6 receive a --

7 Q Is one of the terms that you might be
8 looking for the price that you are paying your supplier
9 for the steel?

10 A The price?

11 Q Yes.

12 A Yes. They confirm the price that we agreed
13 upon.

14 Q Let's say that things go without a hitch
15 and the steel is being shipped, let's say, from Japan
16 since you normally deal with these two Japanese
17 companies, to the United States, was that steel being
18 shipped to Framen Steel Supply Company?

19 A Yes.

20 Q Where would you take possession of the
21 steel?

22 A In the port of entry, which is, by the way,
23 agreed upon also.

24 Q At that point was Framen the owner
25 of the steel?

1

2 A At that point Framen would be the owner of the
3 steel, after the invoice, naturally.

4 Q When you received an invoice thereafter
5 what would be the procedure for making payment to
6 your supplier at Framen Steel?

7 A We would have the invoiced processed.

8 Q What does that mean? Explain that in
9 just a little bit of detail.

10 A We would make sure that the invoice was correct
11 and effect payment.

12 Q Does that mean that Framen Steel Supply
13 Company would write a check to whoever your supplier
14 is and mail the check in?

15 A That is right. Actually, being within the
16 proximity, it would either be handed over to them
17 by messenger or mailed.

18 Q Was that one of your functions or
19 carried out by either Mr. Mendal or your accountant?

20 A That was carried out by one of the girls.
21 You mean the actual mailing of the check?

22 Q No, I mean the payment. Who would
23 sign the check, for instance?

24 A I would not sign the checks.

25 Q In the case of Okaya, is it not true that

1

2 Okaya (U.S.A.) Inc. is a separate corporation from
3 a Japanese steel manufacturing company also named Okaya?

4

MR. LUSTIGMAN: If you know.

5

A I don't know.

6

Q When you dealt with Okaya (U.S.A.) Inc.
7 and placed an order with them did you understand that
8 they would manufacture the steel?

9

A No.

10

Q Who did you understand would manufacture
11 the steel?

12

A One of the Japanese steel mills in Japan.

13

Q Did you know which steel mill or which
14 company?

15

A If we wanted to we could find out.

16

Q Normally would you find out? Was that
17 part of the instructions, part of the terms?

18

A Unless the customer would want to know we really
19 did not care who manufactured it. We gave them that
20 leeway, to be able to order it from more than one mill.

21

Q What would you describe Okaya (U.S.A.) Inc.
22 as; were they a broker?

23

A I would say a Japanese trading company.

24

Q They are not a manufacturing company?

25

A I don't know what their charter is. If they do

1

2

manufacture, I don't know what they do. I have never heard of them manufacturing.

3

4

Q You did not normally know or care

5

whether Okaya placed its order through any particular company?

6

7

A Any particular mill, to any particular mill.

8

Q How about any particular company in Japan?

9

I assume there is more than one firm in Japan which manufactures steel?

10

11

A There is.

12

Q Did you care through whom Okaya went,

13

which firm?

14

A Not unless the end user had any objections or preference.

15

16

Q How about specifically now in reference

17

to Philips Industries; in your dealings throughout

18

this period from 1973 to the end of 1974, did you

19

ever inquire as to where the steel was being manufactured

20

in any of those orders?

21

A I don't believe so.

22

Q Did Philips Industries ever want to know

23

where the steel was being manufactured?

24

A No. That is the reason why I never inquired.

25

Q And normally, then, you would not have

1

2

supervised in any sense the manufacturing of the steel?

3

A No.

4

Q You did not have an agent in Japan, say,

5

go see what the mill was doing?

6

A Okaya. That would be Okaya's function. If

7

there was such a need, that would be their responsibility.

8

In other words, if the steel was not to the

9

specifications ordered we would have recourse to Okaya

10

and the customers would have recourse to us if it were not

11

to specific requirements.

12

Q When did you first have an opportunity

13

to see whether the steel was to your specific require-

14

ments?

15

A When it arrived.

16

Q At that point the steel would come to the

17

dock in whichever port it was, and how did you check

18

the specifications?

19

A We did not check the specifications. It was

20

shipped to the customers.

21

Q Did anyone from Framen Steel ever go to

22

look at the steel and see if it met the specifications

23

in your order?

24

A There was no reason for us to go to the harbor

25

or the port to check the steel. Once the customer

1

2 received it in his place he would know whether it was
3 satisfactory or not. We have shipped many, many
4 thousands of tons of steel and we have not had any
5 complaints.

6

Q In your dealings --

7

A In fact, with Philips. We shipped them thousands
8 of tons of steel and they have never complained to
9 us about the quality.

10

Q In your dealings with Okaya, were there
11 any other written communications between Framen and
12 Okaya other than the confirmations which you have
13 already testified about?

14

A No. Of course, the invoicing. When it came
15 time for them to invoice they would give us whatever
16 drafts, whatever documents we need or we needed from
17 them.

18

Q I believe that the import of your
19 testimony is that you did not control the manufacture
20 of the steel. Would that also be true as to the movement
21 of the steel? Did you have anything to say about how
22 the steel was moved?

23

A Only to the extent that it was to be moved by
24 vessel.

25

Q Did you specify which vessel?

1

2 A No.

3 Q Which company?

4 A No.

5 Q Or any other details as to the trans-
6 portation?7 A No. Actually, we purchased the steel on a
8 C.I.F. duty-paid basis, U.S. port, whichever port
9 was decided upon.10 Q When the steel arrived in the United
11 States port was it the function of Framen Steel to
12 transport that steel to its customer?

13 A Not necessarily.

14 Q Let's take specifically in the case
15 of Philips Industries; how did that work?16 A The steel was sold F.O.B. the port of entry
17 and in turn --18 Q Was that invariably true in all the
19 dealings with Philips?20 A The first one, no, because we had it in
21 our warehouse, the first transaction. The steel was
22 in a warehouse so therefore there would have been --
23 but we sold them F.O.B., I believe. To the best of
24 my knowledge we sold them F.O.B. and we facilitated
25 their tasks and used trucking companies to get the

1

2

steel to them.

3

Q Turning specifically to the steel which

4

is the subject matter of the complaint here -- and I

5

think you are familiar with the complaint, are you not?

6

A Yes.

7

Q When that steel arrived in the United

8

States it was then stored someplace, was it not? It

9

was put into a warehouse of some kind?

10

A Yes.

11

Q Is that warehouse controlled by you?

12

A No.

13

Q Where is the warehouse located?

14

A The warehouse was located in Philadelphia.

15

Q When you say it was, is it still?

16

A It is still there.

17

Q And the steel is still there or not?

18

A I don't know whether the steel is still there.

19

Q Do you know where the steel is?

20

A I do not know.

21

Q When the steel arrived here pursuant to

22

your contract with Okaya (U.S.A.) Inc., it was at

23

that point put into a warehouse in Philadelphia?

24

A That is correct.

25

Q You were informed that it was put into

1

2 a warehouse or did you direct that it be put into
3 a warehouse?

4 A We were informed that it was put in a warehouse.

5 Q By whom?

6 A By Okaya. And I believe there was a letter
7 written in April informing us.

8 Q April of what year?

9 A Of '75, informing us that the steel was being
10 held at our disposal in the warehouse in Philadelphia.

11 Q Since April of 1975 do you know what
12 has happened to the steel?

13 A No. We reached an agreement with Okaya whereas
14 we do not have any more control over the steel, or
15 that particular portion of the steel.

16 Q When was that agreement reached?

17 A I think in February of this year.

18 At which point we allowed them not to take
19 certain steels that we had sold to them in exchange
20 for us not taking the steel from them.

21 Q So in effect you settled whatever claim
22 Okaya may have had against you on this steel?

23 A At great loss.

24 Q Did that settlement provide that Okaya
25 was to become, if indeed they had never been, the owner

1

2 of that steel?

3 A That settlement, yes.

4

5 Q So that as of February 1976 Framen Steel
6 Supply Company is no longer the owner of the steel, if
7 they ever were?

8

9 A Actually, yes. That is correct.

10

11 The thing is that we were the owner -- well,
12 okay.

13

14 Q So that since February of 1976 you
15 don't know whether Okaya may have shipped that steel
16 back to Japan or not?

17

18 A No.

19

20 Q You don't know whether they have kept
21 it in that same warehouse or not?

22

23 A No.

24

25 Q You don't know whether they have sold
that steel or not, do you?

26

27 A No.

28

29 Q Have you made any inquiries of Okaya
30 as to whether that steel may have been sold?

31

32 A No. That came as part and parcel of a settlement
33 that we made with them.

34

35 Q I am not sure that I understand that.

36

37 A That they would keep the steel in turn for us

1

2

not selling them steel which they had purchased from

3

us. We sold steel to Okaya, too. Not only did we

4

buy from them but we sold them.

5

Q Was that steel manufactured in the United

6

States for shipment to Japan?

7

A No, actually imported from Europe and sold to

8

them for resale by them in the United States.

9

Q They refused to take delivery?

10

A They refused to take delivery of the steel.

11

And at that point in time we went into litigation

12

with them and we reached a settlement where we would

13

not take the steel that we were forced to take by

14

Philips and they would not take the steel that we

15

sold them.

16

Q What did you thereafter do with the steel

17

which you say you sold to Okaya?

18

A It is still in the warehouse. We still have

19

physical possession of it. It is in Philadelphia,

20

about eight hundred tons, and there is a loss of a

21

minimum of \$250,000 on that alone.

22

Q That is the steel that you sold to Okaya?

23

A Which they did not take.

24

In addition to that, by the way --

25

Q What was --

1

2

MR. LUSTIGMAN: Let him finish his

3

answer.

4

Q Finish your answer.

5

A In addition to that, we were forced to take back
some nine hundred tons of steels which we sold to
Okaya from a domestic source, American mill, and then
returned it to us because of this particular transaction.

9

Q How much had you billed Okaya for the
steel which you said you sold to them, in which this
litigation had arisen?

12

MR. LUSTIGMAN: Objection. It is beyond
the scope of jurisdiction. Isn't it?

13

14

Q Was that letter that you received in
April 1975 the first information you received from Okaya
that the steel which is the subject matter of this
complaint was being warehoused in that particular
warehouse in Philadelphia?

19

MR. LUSTIGMAN: I believe, to get the
answer clear, the witness testified he was not
sure of the date. I would rather not use that
as a definitive point.

20

21

22

23

MR. TULCHIN: Would you mark this, please,
as an exhibit for identification.

24

25

(Letter dated April 24, 1975 from Okaya

1
2 to Framen Steel Supply Company marked
3 Defendant's Exhibit A for identification,
4 this date.)

5 MR. TULCHIN: This is a document
6 produced by the defendant pursuant to
7 production documents under Rule 36.

8 Do you want to look at this? (Handing
9 document to counsel.)

10 BY MR. TULCHIN:

11 Q Is that a letter that you had referred
12 to earlier concerning the warehousing of this steel?

13 A Yes.

14 Q The date is April 24, 1975.

15 A Yes, that is correct.

16 Q The letter refers to, on the first page,
17 a list of various amounts and kinds of steel that
18 Okaya says, according to the letter, were ordered
19 by you and arrived at Philadelphia, Pennsylvania.

20 A Yes, that is right.

21 Q Could you identify for me which pieces of
22 steel listed here were ordered by you in connection
23 with the Philips order?

24 A All of it.

25 Q All of this steel?

1

2 A Yes, that is correct.

3 Q The names listed under the numbers
4 in the left-hand column, would those be the vessels
5 the steel came on?

6 A Yes.

7 Q Is there any indication of the dates
8 the vessels arrived in Philadelphia?

9 A Not in the letter.

10 Q To go back for a minute, you said
11 originally that once the steel had arrived in
12 Philadelphia Okaya arranged to have it put in a
13 warehouse there; is that right?

14 A This particular shipment?

15 Q We are talking about this steel which
16 is on this letter dated April 24.

17 A Yes, they did.

18 Q When did they first inform you that that
19 had been done?

20 A As each vessel arrived.

21 Q How did they inform you; by telephone?

22 A By telephone.

23 Q Was that telephone call from their offices
24 in the World Trade Center to you?

25 A That is right.

1

2

Q When were those calls made generally?

3

A I can't recall.

4

Q Just when the vessels arrived?

5

A Yes.

6

Q Within a day or two?

7

A Before the vessel would arrive, maybe, if the

8

ETA was -- within a day or two before the vessel

9

would arrive.

10

Q Was this a formal procedure?

11

A Yes.

12

Q A day or two before the vessel would

13

arrive, they would notify you that the steel would be

14

put in the warehouse?

15

A No, they would announce that the steel was

16

arriving.

17

Q How about the question of how they

18

informed you that this particular steel was going to

19

be put in a warehouse in Philadelphia? When did that

20

first occur?

21

A It occurred after we received the cancellation

22

from Philips.

23

Q How did Okaya inform you that the steel

24

was being put in a warehouse?

25

A We informed that that we could not at the present

1
2 time take the steel because of the cancellation of
3 Phillips.

4 Q What did they then say? That the steel
5 would be put in a warehouse?

6 A They would --

7 Q They wrote this April 24, 1975 letter?

8 A Is this the first -- they didn't say it went
9 in on that date.

10 Q I will try to find out from you, whether
11 it be by telephone or some written communication, how
12 and when you first got information from Okaya that
13 the steel which is the subject matter of this complaint
14 was being put into a warehouse.

15 A By phone.

16 Q When did that occur?

17 A As each vessel arrived.

18 Q There may be some confusion here. I
19 think you have testified that you first called Okaya
20 to tell them that you could not take the steel?

21 A That is right.

22 Q When was that call made?

23 A Prior to the arrival of the first shipment.

24 Q During that first telephone conversation
25 did somebody at Okaya say to you, "Well, in that event

1

2 we are going to put this steel into a warehouse"?

3 A They probably did.

4 Q You say "probably." I am trying to find
5 out when you first learned that the steel was going to
6 be warehoused in Philadelphia.

7 Do you have any recollection of talking
8 about that on the telephone with anyone at Okaya?

9 A The only recollection I have is that when the
10 steel was cancelled, when we received the cancellation,
11 at that point we informed Okaya that we could not take
12 possession of the steel at that point in time.

13 Q Was this letter dated April 24, 1975, which
14 has been marked as Defendant's Exhibit A for identificatio:
15 is that the first written communication from Okaya
16 concerning the warehousing of this steel?

17 A From them, yes, the first written one, yes.

18 Q You say from them. Were there any others?

19 A No, that is the only one that I can recall.

20 Q At any time before April 24, 1975 did
21 you attempt to resell the steel which was being warehoused
22 in Philadelphia?

23 A At that point the market had collapsed and there
24 was no market.

25 Q That is not the answer.

1

2 A We attempted to find a buyer.

3 Q How did you do that?

4 MR. LUSTIGMAN: Isn't this getting
5 a little beyond the jurisdiction aspect?

6 MR. TULCHIN: You may be right.

7 Q From April 24, 1975 until February of
8 1976, when you reached the settlement with Okaya, did
9 you have any communications with Okaya at all concerning
10 this steel?

11 A We had communications concerning all matters
12 that we had in litigation with them.

13 Q I mean particularly the location of the
14 steel? Did you mean that it was still being kept
15 in Philadelphia, or didn't you care?

16 A I can't say that I -- it went into Philadelphia
17 and therefore I assume it was in Philadelphia.

18 Q Did you consult any corporate records
19 of Framen Steel before coming here today?

20 A No.

21 Q Everything you are telling us is from
22 memory, as you remember the events?

23 A Yes.

24 Q Do you specifically remember the alleged
25 orders or contracts which are the subject matter of the

1

2 complaint?

3 A I remember.

4

Q You remember specifically the event

5

that occurred?

6

A You mean the events that occurred leading
7 up to the cancellation?

8

Q All the events that might refer to
9 these alleged contracts.

10

A We had orders. I don't know whether alleged
11 or not. We do have -- counsellor has them?

12

MR. LUSTIGMAN: He is not admitting that

13

there is a valid contract, that is all.

14

MR. TULCHIN: The question whether

15

there is or isn't is a legal question.

16

Q Do you contend that there were contracts
17 between Framen Steel and Philips Industries?

18

A Yes.

19

Q We will proceed on that basis.

20

Do you remember the events that occurred
21 in connection with those contracts, as you called them?

22

A Not vividly.

23

Q The placing of the orders, the telephone
24 calls?

25

A I have not looked at any of the corporate records.

1
2 I think I could recall but I don't know whether I can
3 recall accurately the sequence. I know that we did
4 have an order and that it ended with a cancellation.
5 The cancellation was given --

6 Q What you remember, then, is what you call
7 the cancellation and not the events that occurred
8 before the cancellation?

9 MR. LUSTIGMAN: It is not what he
10 testified to.

11 Q Let me ask you --

12 MR. LUSTIGMAN: You are asking a general
13 question. Why not ask a specific question.

14 Q Do you remember a telephone call which
15 took place sometime in August of 1974 from somebody
16 at Philips Industries concerning the sale of steel
17 by you to them? Do you remember any such telephone
18 call?

19 A We had conversation with them.

20 Q Do you remember a conversation with them?

21 A On a specific date?

22 Q I am not asking you about any specific
23 date. Do you remember a conversation?

24 A I spoke with them. I can't really remember a
25 conversation unless it can be brought to my mind as to

1

2

what was discussed at that point.

3

Q The complaint in this action, which you

4

said already that you are familiar with, contains

5

three causes of action. Let's go to the first

6

cause of action. If you would like, you may look at

7

Paragraph 4 of the complaint. I think you have it

8

before you, which says that, "On or about August 9, 1974,

9

as evidenced by a confirmation of purchase order,"

10

etcetera, etcetera, "defendant agreed to purchase and

11

defendant agreed to have merchandise," etcetera, etcetera

12

certain amount of steel.

13

You testified earlier that these contacts

14

with your customers and specifically with Philips

15

usually were initiated by telephone?

16

A Yes.

17

Q So in this particular case did this

18

order, which is contained in the first cause of action,

19

first come about as the result of a telephone conver-

20

sation between you and somebody at Philips?

21

A Yes, that is correct.

22

Q That would be you personally?

23

A Yes, me personally.

24

Q Do you remember speaking to someone

25

personally?

1

2 A Mr. George Allman is the one who placed the
3 order with us.

4 Q Do you remember when that conversation
5 occurred?

6 A It had to be prior to the -- around August 9
7 because we received a confirmation shortly thereafter
8 of the purchase.

9 Q Paragraph 4 of the complaint says
10 that the defendant, meaning Philips Industries, agreed
11 to purchase and plaintiff agreed to have manufactured
12 this steel.

13 A Yes, that is right.

14 Q Did you then go out and have this steel
15 manufactured?

16 A We went and placed the order, we called up
17 Okaya, placed the order with them, giving them the
18 specific sizes that were required and they in turn
19 placed the order with the mill.

20 Q A mill in Japan then manufactured the
21 steel pursuant to order from Okaya?

22 A Yes, that is correct.

23 (A brief recess was taken.)

24 Q Mr. Polne, in connection with this
25 specific order from Okaya which is the subject matter

1

2

of the first cause of action of the complaint, when
you called Okaya how did you identify yourself?

3

4

Do you remember having specifically called Okaya to
order this steel?

5

6

A Surely.

7

Q How did you identify yourself?

8

A By my name.

9

Q You said, "This is Mr. Polne from

10

Framen Steel"?

11

A Yes.

12

Q Did you say the steel you were ordering

13

was on behalf of Philips Industries for their use?

14

A They knew it would be for Philips.

15

Q How did they know it?

16

A They asked because they asked before we got

17

the order.

18

Q This particular order now identified

19

in the first cause of action?

20

A Yes.

21

Q When did they ask you?

22

A When we came to them with the inquiry from

23

Philips regarding these specific sizes. At that

24

point, before they went back to the mill, they wished

25

to know who the end user was and we gave them that.

1

2

We told them the end user would be Philips and if the price would be acceptable then we could do the business.

4

5

6

7

When we called back Mr. Allman and informed him of the price, he in turn came back to us at a later time and placed the order, accepted the price.

8

9

Q You say you informed Mr. Allman of the price?

10

A Yes.

11

12

Q Was that your price to him or Okaya's price to you?

13

A My price to him, counsellor.

14

15

Q You did not inform him of Okaya's price to you, did you?

16

A No, sir.

17

18

Q Did you inform him that you were even dealing with Okaya?

19

A At that point he never asked to find out.

20

21

Q He was not told because you didn't tell him that unless he asked?

22

23

A I wouldn't tell him that unless he asked. He is buying steel from us.

24

25

Q You didn't consider it any of his business to find out where you were getting the steel from?

1

2 A I would not say that. If he would have asked
3 we would have told him.

4 Q But normally you felt this decision
5 about where to buy the steel was up to you?

6 A Yes. Normally, yes.

7 Q In connection, again, with this particular
8 order that we are talking about which occurred on or
9 about August 9 of 1974, you did not know where that
10 steel was being manufactured?

11 A I knew where, of course; in Japan.

12 Q Which particular company or mill?

13 A No, I did not know.

14 Q That decision was basically up to Okaya?

15 A Yes, that is right.

16 Q Do you know the relationship between
17 Okaya (U.S.A.) Inc. in the World Trade Center and
18 a Japanese company by the name of Okaya Ltd.?

19 A That would only be speculation on my part. I
20 would assume that they are related somewhere along the
21 line but I would not really know. I deal with Okaya
22 (U.S.A.), I don't know the other people.

23 Q Do you have any knowledge concerning
24 Okaya (U.S.A.) Inc.'s dealings with any of its
25 suppliers? Do you know how they arranged for the

1

2

manufacture of the steel or with whom or how they

3

went about getting that steel for you?

4

A That would be speculation. It would be hearsay.

5

But I would assume they have a certain allocation of

6

steel which the mill allocates them and they in turn

7

sell it to us.

8

Q When Okaya (U.S.A.) Inc. has steel

9

manufactured in Japan, if you know now, do they

10

identify their customer? Would they identify you,

11

Framen Steel Supply Company, "This is for Framen Steel

12

Supply Company"?

13

A Yes.

14

Q They would?

15

A Yes.

16

Q Would they identify Framen Steel's

17

customer when they were having the steel manufactured?

18

A Yes. In this particular case, definitely yes.

19

This is specific. Now, we are not talking about

20

normal anymore. We are talking now about a specific

21

thing. The specific thing is that the steel was

22

manufactured to a size and a gauge which is not normal

23

to the steel industry. And, therefore, being that it

24

was such a large order it was their prerogative to

25

request and we gave them the information.

1

2

Q The question is whether Okaya (U.S.A.)

3

Inc. identified Framen Steel or Philips Industries

4

when they placed their order with the mill in Japan.

5

A I would say it is very possible.

6

Q But you don't know?

7

A I could not know for sure.

8

Q You don't know whether they did or

9

didn't?

10

A For sure I could not know.

11

Q Do you know when this steel was manufacture

12

We are talking about the first cause of action. Do

13

you know when, what dates, the steel was manufactured

14

in Japan?

15

A There were specific dates when it was supposed

16

to be manufactured as per the order and that is when

17

it was manufactured.

18

Q Normally in dealing with Okaya, after

19

the steel is shipped to a port in the United States,

20

you then make payment directly to Okaya; isn't that

21

what you testified to earlier?

22

A Yes.

23

Q Would that payment in any way depend

24

upon the payment to you by your customer for that steel?

25

A Not necessarily.

1

2

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25

Q The operations were independent of each other; is that right?

A Yes, that is right.

Q In connection with this very steel that is talked about in the complaint, in all three instances, and we are talking about three causes of action -- I think you are familiar with them -- the allegation is made that on or about October 15, 1974 Philips Industries cancelled a part of each one of these orders.

A Yes.

Q Do you have any specific remembrance of how that happened and any events that occurred at or about that date?

A They requested that we cancel a portion of the steel. We said we would have to check with Okaya who in turn would have to check with the mill to make sure it was manufactured; and if it was not manufactured we could accept the cancellation and pass it on. And we did.

Q Did that communication come through the telephone or was it written?

A Through the telephone because time was of the essence.

Q When Philips called you on or about

1

2

October 15 and asked you if these various parts of their orders could be cancelled, what did you then do?

3

4

A We in turn called Okaya and requested the same thing.

5

6

Q What was the next thing that happened?

7

Did you receive a telephone call back from Okaya?

8

A Yes, that it was possible to cancel that portion of the order.

9

10

Q Did you then inform Philips of that?

11

A We informed Philips of that.

12

Q That was also by telephone?

13

A That was also by telephone.

14

Q Do you consider, Mr. Polne, the business

15

of Framen Steel Supply Company to be a specialized

16

business? Is it one that requires a certain amount

17

of steel expertise in the field in which you are

18

working?

19

A I like to think so.

20

Q Is that expertise not gained through

21

a certain amount of years of experience in this

22

field?

23

A It is possible that years of experience would help

24

Q How would you describe the function of

25

Framen Steel Supply Company? Would you say Framen was

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a broker of steel?

A Yes, I think so.

Q In arranging to have steel manufactured and imported into the United States, which I understand is what Framen generally does, does it not call to bear the expertise which it may have gained in knowing who to deal with and how to deal with those persons?

A Are you talking about the buying end of it or the selling end of it?

Q The buying end.

A I would say yes.

Q In making your purchases do you receive any instructions from your customers as to how you should go about doing that?

A No, that is the function that we supply them.

Q That basically is your service, knowing where to go and who to go to?

A Where to go and where to find the steel. And if I may just make a comment now, at that point in time when the transaction was consummated with Philips Industries, the steel market was anything but normal.

Q I am speaking generally now.

A I would like to make my statement.

Q Just finish that.

1

2 A And hours, in fact, minutes delay in placing
3 an order by phone -- and that is why the phone was
4 so important -- could mean that the allocation from
5 the steel mill could have been taken up by some
6 other company. I wanted to interject that because
7 the importance of time was very important at that point.

8 Q Your function, generally, as you said,
9 the service you were providing to your customers,
10 was knowing where to go and how to get this steel that
11 they wanted?

12 A That they needed.

13 Q Otherwise the companies could have bypassed
14 you and directly called Okaya if they had known where
15 to go and who to talk with?

16 A Maybe.

17 Q So that your function basically was to
18 provide this expertise as a broker?

19 A It is still our function.

20 Q In making purchases of steel you, meaning
21 you and the other people at Framen, make the decisions
22 as to how those purchases are to be arranged, do you not?

23 A I don't follow your question.

24 Q I withdraw that question and ask this
25 question: Did you receive instructions from your

1

2 customers as to who to talk to and how to go about
3 the purchase of the steel?

4

A No.

5

Q That was your expertise and that was
6 what you did at Framen?

7

A That is right.

8

Q Now, getting back to the specific
9 communications on or about October 15, 1974, at any
10 time between October 15 and sometime in December of
11 1974, did you make any complaints to Philips Industries
12 about those partial cancellations?

13

A The cancellations --

14

Q The partial cancellations or October 15?

15

A No. The ones that were accepted by Okaya,
16 respectively the mill, we had no other comments to make.

17

Q You weren't concerned about those
18 cancellations as long as Okaya had honored your
19 cancellation of the same steel?

20

A No. No. I was concerned about the cancellation
21 in the first place because that showed that we had lost
22 face with the Japanese. They accepted the cancellation
23 even though it was on the mill's production schedule.

24

However, it was not produced and they accepted
25 it reluctantly. And because of the cancellations, by

1

2

the way, it is my belief that we are very heavily
damaged in terms of our relationship with all the
Japanese --

4

5

Q Let's not get into your beliefs. The

6

question does not relate to your relationship with

7

the Japanese companies.

8

MR. LUSTIGMAN: The question does

9

relate to his relationships with the Japanese,

10

as the witness is trying to explain to you.

11

Q Let me try to ask the question this way:

12

After learning that the mill and, therefore

13

Okaya (U.S.A.) Inc., would honor your cancellations,

14

what did you then do? What did you tell Philips?

15

A We told Philips we would accept the cancell. ion

16

of whatever they requested at that point, which they

17

did request.

18

Q From that day until the end of 1974

19

was there any more said to Philips about those

20

cancellations?

21

A Not the ones that were cancelled.

22

Q No communications in any way?

23

A Nothing to be said. They cancelled it and

24

we felt reluctantly, but if it would help them we

25

agreed to the cancellation.

1

2

Q In dealing with Okaya (U.S.A.) Inc. do

3

you provide any instructions to them as to how to

4

manufacture the steel or anything else, how to

5

ship it, or any of those details?

6

A The customer tells us what he wants and we tell

7

Okaya exactly.

8

Q Did you consider that Okaya (U.S.A.) was

9

your agent?

10

A We considered them to be part and parcel --

11

in other words, we purchased the steel from them and

12

that is all I know.

13

Q You consider them to be an independent

14

contractor in these dealings?

15

A I don't consider them other than people who

16

were able to supply me. I don't know what.

17

Q Earlier you said that when you received

18

a purchase order, a written purchase order, from

19

Philips, all you did was look at the terms that were

20

contained on the front side of that purchase order

21

and not look at the back or any of the other parts of

22

the purchase order; is that correct?

23

MR. LUSTIGMAN: Yes, I believe he used

24

the words "confirmation of purchase order."

25

A Yes.

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Q We will call it whatever you wish at this point. Call it whatever you wish.

A Yes. There was no reason to read any further.

Q Would that hold true as to these three orders which are contained in the complaint?

A Yes, it holds true as to all orders I received from them in the past.

Q Are you familiar at this point as to what is contained in those purchase orders or, as you prefer, confirmation of purchase orders?

A Yes. At this point in time, today?

Q Yes.

A Yes. I am not completely familiar, but I did read the back of it.

Q What caused you to look at those purchase orders at this point?

A When we asked legal counsel, at that point they pointed out that there was certain discrepancies on the back.

Q What do you mean by the word "discrepancies"?

A That there was mention in terms of items in there that -- how should I say it?

MR. LUSTIGMAN: Were relevant.

1

2 A Yes.

3 Q In dealing with Okaya (U.S.A.) Inc.,

4 I believe you also testified that you did not read
5 the writing which was contained on the confirmation,
6 I think you called it, of order.

7 A Yes, the front. I don't believe that there is
8 a back to it. But if there was we didn't look at it.
9 Everything that is -- in our dealings with companies
10 we find that unless you have something to hide you
11 don't hide it on the back, you put it on the front and
12 you say it outright.

13 Q Were you concerned, for instance, about
14 the risk in transporting this steel? Did you know,
15 for instance, that your contract with Okaya (U.S.A.)
16 Inc. might have provided for which one of the parties
17 was responsible for the risk in the transportation?

18 A Counsellor, I told you at the beginning, also,
19 that we purchased steel CIF landing duty paid. That
20 means cost, insurance and freight. The merchandise
21 was insured.

22 Q Who insured the merchandise?

23 A They did.

24 Q Continue.

25

MR. LUSTIGMAN: Do you have other questions

1

2 A I answered your question.

3 Q Have you finished your answer?

4 A If you want me to continue, I can.

5 Q As far as you were concerned, you need
6 not read the contract between yourself and Okaya to
7 determine --

8 A We had a very close relationship with that
9 company, counsellor. The mainstay of a company like
10 ours is our word. The same thing is a company like
11 Okaya. We have had years and years of close relationship
12 with these people and we have never found that to
13 have failed us. Our word is our bond and so is
14 theirs to us, or so at least until such time as we
15 had this problem with Philips.

16 Q Would you say that you and Okaya had
17 a contract in connection with the order of the steel
18 which is the subject matter of this complaint? You
19 say it was a contract?

20 A I believe so.

21 Q What would you say were the terms of
22 that contract?

23 A I don't know what you mean by that.

24 Q What did the contract consist of?

25 A The purchase of a given amount of steel specified

1

2 by size, by gauge, and price.

3 Q In fulfilling the purchase orders you
4 received from Philips Industries were you interested
5 in making as great a profit as you could for Framen
6 Steel Supply Company?

7 A No.

8 Q You were not?

9 A No.

10 Q Is that not normally your duty and
11 function, to make a profit for Framen Steel?

12 A Profit, yes. But not the most profit.

13 Q Let's say to make a reasonable profit?

14 A Then, again, you are asking me to assume what
15 is reasonable.

16 Q You tell me.

17 A I have no idea.

18 Q Did you not testify --

19 A I want to give you an example, now that you
20 brought this up.

21 Q I didn't ask you about an example.

22 MR. LUSTIGMAN: Let the witness finish
23 his answer.

24 MR. TULCHIN: I did not ask for an
25 example.

1

2 A You asked whether I would charge the most I could.

3 Q The question is not whether you charged

4 the most you could; the question is whether you were

5 interested in making a reasonable profit.

6 A That was the second question. The first question

7 you asked me --

8 Q Let me finish. The spread between what

9 you were charging and what you were being charged by

10 your supplier --

11 A Yes.

12 Q -- isn't that your function, to have a

13 reasonable spread there?

14 A Yes.

15 Q That is how Framen stays in business?

16 A Yes.

17 Q In fulfilling an order of Philips

18 Industries here, were you not interested in having

19 some kind of reasonable spread between the two prices?

20 A That is correct.

21 MR. LUSTIGMAN: Do you have anything

22 else you want to add to that?

23 A I did want to add something, if I may.

24 Q If it is not responsive to the question --

25 A It is in terms of "reasonable."

1

2

Q Go ahead.

3

A In the past shipments that we made to Philips, especially the ones in '74, mid-'74, we could have sold the steel elsewhere for upwards of one hundred dollars a ton more profit, more.

7

We didn't have to supply Philips at that point because the market had gone haywire. But we kept our commitment with them and sold them at the same price that it was contracted for.

11

Q That is very admirable but it is not my question.

13

In connection with any of these orders from 1973 onward that Philips placed with Framen, did Philips ever send anyone to New York to speak to you about those orders?

17

A No.

18

Q Did you ever meet a Philips employee in New York, period?

20

A I didn't meet a Philips employee, period, and I would like to add to that; it is not our practice to meet our customers.

23

Q Was Philips informed by you as to what steps you were taking to fulfill their orders?

25

A I don't understand the question.

1

2

Q After the order had been placed with

3

you and you had received the written purchase order or

4

confirmation, whatever you want to call it, what was

5

the next communication with Philips?

6

A That we would inform them when the steel would

7

be arriving.

8

Q That is all? You just informed them

9

when the steel would be arriving?

10

A Yes.

11

Q Philips was not kept informed as to when

12

the steel was being manufactured, who was manufacturing

13

it, what boat it was coming on?

14

A As soon as we got the information we would pass

15

it on.

16

Q Would you pass on the mill in Japan that

17

was manufacturing the steel?

18

A If they needed that information.

19

Q Did you in this particular instance?

20

A They did not ask me.

21

Q So you did not pass it on?

22

A There was no reason to pass it on.

23

Q Fine.

24

A If they had requested it. There is no secret.

25

There are only a couple of mills in Japan. It is not

1

2 a covert CIA mission.

3

Q I am not implying that it was. I want to
4 know what Philips knew or didn't know.

5

Did Philips know the steel was to be
6 manufactured in Japan?

7

A Yes.

8

Q How did they know that?

9

A We informed that it was Japanese and they
10 received a shipment of this particular steel, which
11 they turned down, and therefore they would know from
12 the markings on it. That same Nicholasville received
13 and accepted one shipment. I believe in -- they
14 did accept one shipment in Nicholasville.

15

Q In your dealings with your customers
16 has there ever been a time when, say, something went
17 wrong and the steel was either not manufactured on
18 time or not manufactured properly and you were informed
19 by your suppliers that there was a problem somewhere,
20 that they would not meet the specifications of the
21 contract? Has that ever happened?

22

A I would like you to go a little bit further
23 into it. I really don't quite understand what you
24 are trying to get at.

25

Q I am simply trying to ask a question.

1

2 And the question is this -- first let me ask you,
3 by the way, because I do not think I asked you
4 before, how long were you employed by Framen Steel?

5 A Twelve years.

6 Q In the course of those twelve years
7 has there ever been a time when you were informed
8 by your supplier that they were not able to meet
9 either the specifications of the contract or were not
10 able to manufacture the steel at all, or the steel
11 would not be ready in time for shipment to the United
12 States?

13 A That has happened in terms of not being able to
14 manufacture it in time. Maybe a breakdown of machinery.
15 That can happen. It is a force majeure clause which is
16 in all contracts.

17 Q When something like that happened, whose
18 responsibility and function did you consider it to be
19 to make whatever arrangements were necessary to do
20 whatever was second best?

21 MR. LUSTIGMAN: Will you be specific
22 as to what you are talking about? Are you
23 talking about a failure to manufacture, an
24 inability to manufacture, or a slight delay
25 in manufacturing time, or just what?

1
2 Q Let's say there was any one of those
3 problems, you were informed by your supplier that
4 that problem had arisen. At that point, whose
5 responsibility was it to make whatever other arrange-
6 ments might be necessary to make -- to fulfill the
7 terms of the contract as best as could be done?

8 MR. LUSTIGMAN: I object to that
9 question. It calls for a legal conclusion.

10 Q What did you do when you were informed
11 that there was some kind of a problem?

12 A We would in turn inform our customers, the
13 end user.

14 Q What then would happen?

15 A It would be up to them. They would be the
16 ones to say, "Okay, we will wait another few months
17 until it resolves itself."

18 Q At various points, Mr. Polne, in the
19 complaint and in the affidavit which you have submitted
20 in connection with the motion to dismiss, there is
21 reference to the manufacture of steel. At some points
22 you say that the plaintiff manufactures steel and
23 at other points you say the plaintiff arranged to have
24 steel manufactured. How would you characterize that
25 process?

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MR. LUSTIGMAN: Could you point out that particular point in the affidavit that you are referring to?

MR. TULCHIN: Okay. I am referring to specifically Paragraph 6 and I believe--

MR. LUSTIGMAN: Of the complaint?

MR. TULCHIN: We are in the complaint, Paragraph 6 and 13 of the complaint, which says, "Plaintiff duly completed the manufacture," of various items. And then Paragraph 2 of the affidavit, which says that the "Plaintiff arranged for the manufacture" of various steels.

A It is semantics. It is a fact that we ordered it. We have established this for the past two hours. And therefore we did not manufacture it ourselves. And I think your question is rhetoric.

Q Let's forget how you would describe my question. The question is, did plaintiff or did plaintiff not manufacture this steel?

A We did not manufacture the steel.

Q It is very simple. Other than for the fact that various portions of the orders referred to in the complaint were entirely cancelled by Philips

1

2 Industries, did the transactions involved differ
3 in any way from the normal proceedings and normal
4 processes which Framen Steel has in dealing with its
5 customers?

6 A Could you repeat? I didn't quite get the gist
7 of your question.

8 Q All right. Other than the fact that there
9 were certain cancellations involved in these orders,
10 which I assume is somewhat unusual, you don't normally
11 have cancellations, at least on a regular basis?

12 A No.

13 Q Other than the fact that there were
14 cancellations, did any of these transactions go
15 forward in a manner which differed in any material
16 way from your standard procedure?

17 A None that I can recall.

18 Q They were handled in the way that you
19 handle all orders from all customers?

20 A Except that we informed our supplier that it was
21 Philips Industries who ordered it because of the size
22 of the order and the sizes.

23 Q Mr. Polne, are you aware of any documents
24 which would indicate that Framen Steel informed its
25 supplier that Philips Industries was ordering this

1

2 steel from Framen?

3 A I am not aware of it.

4

5 MR. TULCHIN: Could you mark this
6 document, please, as Defendant's Exhibit B
7 for identification.

8

9 (Confirmation of purchase order dated
10 August 12, 1974 marked Defendant's Exhibit B
11 for identification, this date.)12 Q Would you take a look at this document and
13 tell me whether you have ever seen it before?

14 A Yes, I most probably did.

15 Q Are you aware of having seen that particula
16 document before?

17 A Yes, I would say so.

18 MR. TULCHIN: I think we can agree
19 that that is another one of the documents
20 produced by plaintiff in connection with our
21 request for production of documents.

22 MR. LUSTIGMAN: Yes.

23 Q Is this piece of paper a copy of a confirma
24 tion from Okaya (U.S.A.) Inc. to Framen Steel
25 concerning an order of steel in 1974?

A Yes.

Q Is the steel involved part of the very

1

2 steel which Philips supposedly ordered from you?

3 A They did order.

4 Q So that that confirmation relates to the
5 very steel which you had manufactured in Japan
6 ultimately for use by Philips, or so you thought
7 at the time?

8 A A part of it.

9 Q A part of it?

10 A Yes.

11 Q That would have been a part of the order
12 which is referred to as the order of August 9, 1974,
13 would it not?

14 A Yes, probably.

15 Q It is dated August 12, is it not? Would
16 you like to see the order dated August 9, a copy of
17 that?

18 A Yes.

19 MR. TULCHIN: We can confirm that it
20 is the same order. Will you mark these three
21 pages which are copies of one purchase order,
22 or so it is headed at the right-hand top of the
23 page, purchase order of Philips Industries.

24 (Document referred to above marked
25 Defendant's Exhibit C for identification,

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this date.)

Q Mr. Polne, now looking at Defendant's Exhibits B and C for identification, can you tell me whether the steel referred to in Exhibit B is the same steel that Philips had ordered from you and which is reflected in Exhibit C, in the purchase order?

A Well, in this particular one, the order from Philips shows an .075 minumum, and that does not show here in the confirmation. Some of them are.

Q Can you identify which are and which are not, if you know?

A I have to just check them out and see.

MR. TULCHIN: Can we stipulate, since these documents were produced in the fashion they were produced, that Exhibit B contains at least part of the order from Framen to Okaya, at least part of the steel, which Framen had received an order for by Philips.

A Yes, at least one part.

Q Again, turning back to Exhibit B for identification, this confirmation from Okaya to Framen, does that confirmation indicate to whom the steel was sold by Okaya?

A To us, yes. It refers to Framen Steel Supply.

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Q Is that not contained in the upper
left-hand portion of the confirmation of the order?

A Yes.

Q Is there any marking or indication anywhere
on that paper which indicates that the steel was sold
to Philips Industries?

A No.

Q Does the word "Philips" appear anywhere
on that paper?

MR. LUSTIGMAN: Objection.

MR. TULCHIN: It is a simple question.

MR. LUSTIGMAN: It is a simple answer.

The document speaks for itself.

MR. TULCHIN: And the word does not
appear there; can we agree on that?

MR. LUSTIGMAN: Whatever appears, appears.

MR. TULCHIN: All right, we will do it
that way.

Q Mr. Polne, if I may direct your attention
to the back of this document which has been marked
Exhibit B for identification, would you just take a
look at that for a moment?

A How many moments? You expect me to read it?

Q No, don't read it. My question is, have

1

2

you seen that before or a piece of paper which looks

3

like that?

4

A Not to look at it, no. I assume this is the back.

5

Q It is. It is a copy of the back of that

6

confirmation.

7

A I am not familiar with it, no.

8

Again, we have never made it a practice to

9

read the back of a form.

10

Q Mr. Polne, in the upper left-hand corner

11

are the words "Mr. Bernard Bendal."

12

A That is a typo.

13

Q It should be Mendal?

14

A Yes.

15

Q You have referred to him as president?

16

A Managing director, too.

17

Q In dealing, as you did, with your

18

customers, the one hundred or so customers, if after

19

you received a purchase order from a customer you

20

determined that you were unable to supply that steel to

21

the customer, what then would normally happen?

22

MR. LUSTIGMAN: Objection. You are

23

asking a hypothetical question. If you want

24

to ask him a specific question.

25

Q Has there ever been a situation where you

1

2

received an order from a customer and then determined

3

that you were unable to supply that customer with

4

that steel?

5

A Yes.

6

Q At that point did you not call your

7

customer and inform him of that?

8

MR. LUSTIGMAN: Could you state the

9

relevancy of such question to the jurisdictional

10

issue?

11

MR. TULCHIN: It again relates to the

12

whole question of agency and I think it is

13

clearly relevant.

14

MR. LUSTIGMAN: Could you specify in

15

what respects it is relevant to a question

16

of agency?

17

MR. TULCHIN: A question of what Framen

18

was doing in connection with the contracts it

19

had with its customers, I think, relates to

20

the question of whether or not it was acting

21

as agent or independent contractor. That seems

22

to be the question we are faced with.

23

MR. LUSTIGMAN: Go ahead.

24

Q Can you answer that question?

25

A We would -- if the manufacturer or supplier

1

2 would be unable to supply, for whatever reason, we
3 would inform the customers and offer them, in turn,
4 well, alternatives. We could go elsewhere and see
5 if we could obtain the merchandise. And that is
6 what we would do.

7

Q If you determined from your supplier
8 that merchandise could be manufactured to meet the
9 specifications, did you at that point call your customer
10 and say, "Yes, we will fulfill the terms of this
11 purchase order"?

12

A Usually the purchase order doesn't happen that
13 way.

14

Q My question is, how did you inform the
15 customer either "Yes, we can obtain the steel for you"
16 or "No, we cannot obtain the steel for you"?

17

A We would do that by telephone and, based upon --
18 what you are asking is somewhere down the line after
19 the written order is given?

20

Q Yes.

21

A Am I assuming right?

22

Q Yes, you are.

23

A And the mill, for whatever reason, is unable to
24 supply the steel which they contracted to us for,
25 so we would have two alternatives; if, number one, the

1
2 customer would want to wait; or we would want to buy
3 the steel immediately. At this point we would have
4 recourse to other suppliers.

5 Q I want to know whether such notification
6 was made. Did you as a matter of course inform your
7 customer that, one, either the steel would be manufacture
8 and delivered or, two, it could not be manufactured
9 and delivered according to the specifications laid out
10 in the order?

11 A We would inform them by phone that it would be.

12 Q In either event?

13 A Yes.

14 Q When normally did that telephone call
15 take place? After you had learned from your supplier
16 that the steel would or would not be manufactured?

17 A That would be the logical assumption.

18 Q That would occur after you received a
19 written purchase order or not?

20 A I certainly could not answer that because it
21 depends on when the written order came in. All our
22 orders are placed upon verbal.

23 Q How many later normally, in a matter
24 of days or weeks, whatever it takes, would you normally
25 be told by your supplier that the steel was either

1

2

being manufactured or not?

3

A That would be impossible to say.

4

Q Would it be more than two or three days

5

after you first contacted your supplier?

6

A I would think so, but I could not say for sure.

7

MR. TULCHIN: I don't have any more

8

questions.

9

MR. LUSTIGMAN: I have none.

10

(Whereupon, at 12:10 P.M., the deposition

11

was adjourned as above set forth.)

12

13

14

15

Subscribed and sworn to before me

16

this ____ day of _____, 1976.

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25

I N D E XWITNESSEXAMINED BYPAGE

Ruben Polne

Mr. Tulchin

3

* * *

E X H I B I T SDEFENDANT'S FOR
IDENTIFICATIONP A G E

A Two-page letter on the letter-
head of Okaya (U.S.A.) Inc.
to Framen Steel Supply Company,
dated April 24, 1975,

44

B Confirmation of purchase order
dated August 12, 1974,

79

C Philips Industries Inc.
purchase order consisting of
three pages,

80

* * *

1

2 STATE OF NEW YORK)
3 COUNTY OF NEW YORK) ss

4

5 I, NATHAN BORAK, C.S.R., Notary Public of
6 the State of New York, do hereby certify that the fore-
7 going deposition of RUBEN POLNE
8 was taken before me on April 29, 1976.

9 The said witness was duly sworn before the com-
10 mencement of his testimony; that the said testimony
11 was taken stenographically by myself and then transcribed.

12 The within transcript is a true record of the
13 said deposition.

14 I am not connected by blood or marriage with any
15 of the said parties, nor interested directly or
16 indirectly in the matter in controversy, nor am I in
17 the employ of any of the counsel.

18 In witness whereof I have hereunto set my hand
19 and seal of office at the County and State of New York,
20 this 11th day of May, 1976.

21

22

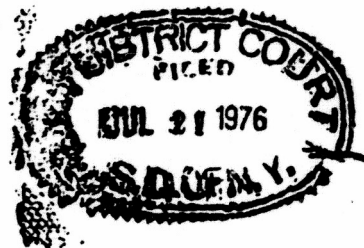
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Nathan Borak

MEMORANDUM AND ORDER OF HON. WHITMAN KNAPP
(Filed July 21, 1976)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRAMEN STEEL SUPPLY COMPANY, INC.,

Plaintiff,

- against -

PHILIPS INDUSTRIES, INC.,

Defendant.

MEMORANDUM AND ORDER

75 Civ. 1643

44811

KNAPP, D.J.

Defendant brought this motion pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure to dismiss for lack of personal jurisdiction in July, 1975. After first hearing oral argument we adjourned the motion sine die to permit plaintiff to take discovery on this jurisdictional issue. That discovery having been completed, and the parties having submitted supplemental memoranda, we again heard oral argument. We have concluded that defendant's motion must be granted.

This action is based upon a contract for sale of raw steel by plaintiff (a broker) to defendant (a manufacturer of various equipment). Defendant placed a telephone call to plaintiff in New York to order the particular steel in question and subsequently cancelled the order. Plaintiff, claiming that cancellation to have been improper, asks damages in this diversity action.

Plaintiff is a New York corporation, with its principal place of business here as well. Defendant is an Ohio corporation, with its principal place of business in Ohio, maintaining no office, showroom or manufacturing facility in New York. It has no personal property here, does not own or rent any real property within the state, nor does it maintain a New York telephone number or mailing address. However, approximately 1%, or \$1,350,000, of its annual sales are made to New York customers. Certain New York manufacturers' representatives carry its spare parts; it sells the parts to them, and they, having title, in turn resell the parts. Three of defendants' staff of salesmen reside in New York; these salesmen are responsible for sales in the entire northeast and reside in New York at their own choice and convenience without direction from their employer. Certain company executives make occasional "good will" and sales supporting trips to New York.

Since this action is premised upon diversity of citizenship, personal jurisdiction is determined according to the laws of the forum state. Rule 4(e), Federal Rules of Civil Procedure, Arrowsmith v. United Press International (2d Cir. 1963) 320 F.2d 219. The relevant New York statutes are C.P.L.R. §301 and §302.

Turning first to §302(a)(1), the "transacting business" section, we find that defendant did not transact any business in New York from which the contract being sued on arose. Making a telephone call to New York to place an order without more is not enough to bring defendant within the ambit of this section. Parke-Bernet Galleries, Inc. v. Franklyn (1970) 26 N.S.2d 13, 308 N.Y.S.2d

337, 256 N.E.2d 506. Moreover, whatever actions plaintiff may have undertaken to perform in New York on behalf of defendant cannot serve to make defendant amenable to process on any theory of agency. Haar v. Armendaris Corp. (1973) 31 N.Y.2d 1040, 342 N.Y.S.2d 70, 294 N.E.2d 855 reversing (on the dissenting opinion below) 40 A.D.2d 769, 337 N.Y.S.2d 285 (1st Dept. 1972).

As for §302(a)(3), there is no basis upon which we can conclude that defendant committed a tortious act which would make the section applicable.

With respect to §301, the "doing business" section, we find that defendant is not sufficiently present in New York to be amenable to process here. The totality of its New York contacts does not rise to the level ordinarily considered by New York courts sufficient to create jurisdiction. Bryant v. Finnish National Airline (1965) 15 N.Y.2d 6, 260 N.Y.S.2d 625, 208 N.E.2d 439. "Continuity of action from a permanent locale is essential" to sustain jurisdiction under Section 301, Meunier v. Stebo (2d Dept. 1971) 38 A.D.2d 590, 591, 328 N.Y.S.2d 608. For example in New England Laminates Co. v. Murphy (Sup. Ct. Nassau Co. 1974) 79 Misc.2d 1025, 362 N.Y.S.2d 730, 4% of annual sales to New York customers, one full time salesman and the New York residence of the national sales manager was not sufficient to constitute doing business. Plaintiff's most colorable argument concerns the manufacturers' representatives, but it has failed to establish that these independent representatives' function is so essential that, without them, defendant would be forced

to bring its own employees in to perform that function. Cf.
Gelfand v. Tanner Motor Tours, Ltd. (2d Cir. 1967) 385 F.2d 116,
cert. denied (1968) 390 U.S. 996.

Accordingly, we find that the complaint must be dismissed
for lack of personal jurisdiction over the defendant.

Settle Order.

Dated: New York, New York

July 19, 1976.


WHITMAN KNAPP U.S.D.J.

UNITED STATES COURT OF APPEALS
SECOND DEPARTMENT

FRAMEN STEEL SUPPLY CO., INC.,
Plaintiff-Appellant,

- against -

PHILIPS INDUSTRIES, INC.,
Defendant-Appellee

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Jame A. Steele, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 310 West 146th Street, New York, New York,

That on the 15th day of December 1976 at 48 Wall St. New York, N.Y.

deponent served the annexed appendix upon

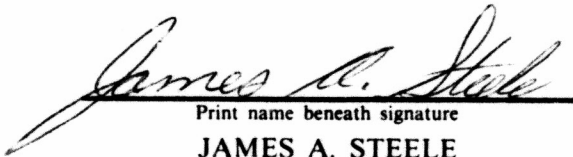
Sullivan & Cromwell

the attorneys in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 15th
day of December 1976

Beth A. Hirsh

BETH A. HIRSH
NOTARY PUBLIC, State of New York
No. 41-4623156
Qualified in Queens County
Commission Expires March 30, 1978


Print name beneath signature
JAMES A. STEELE